(17,436.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 322.

ANTHONY F. SEEBERGER, JULIUS S. GRINNELL, SIMEON D. BUSEY, ET AL., PLAINTIFFS IN ERROR,

vs.

LEANDER J. McCORMICK.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

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a UNITED STATES OF AMERICA, ss:

The President of the United States of America to the honorable the judges of the supreme court of the State of Illinois, Greeting:

[Seal of the Supreme Court of the United States.]

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Anthony F. Seeberger, Julius S. Grinnell, Simeon D. Busey, Conway H. Hillman, Charles G. Blanden, Arthur M. Barnhart, John Cudahy, Charles E. Simon, David A. Kohn, George B. Reeve, and Henry S. Boutell, plaintiffs in error, and Leander J. McCormick, defendant in error, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State on the ground of their being repugnant to the Constitution, treaties, or laws of the United States and the decision was in favor of such their validity, or wherein was drawn in ques-
b tion the construction of a clause of the Constitution or of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said plaintiffs in error, as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within 30 days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 10th day of May, in the year of our Lord one thousand eight hundred and ninety-nine.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by—

HENRY B. BROWN,
Associate Justice of the Supreme Court of the United States.

c In the Supreme Court of Illinois.

ANTHONY F. SEEBERGER, JULIUS S. GRINNELL, Simeon D. Busey, Conway H. Hillman, Charles G. Blanden, Arthur M. Barnhart, John Cudahy, Charles E. Simon, David A. Kohn, George B. Reeve, and Henry S. Boutell

vs.

LEANDER J. McCORMICK.

Error to Appellate Court, First District.

I, Christopher Mamer, clerk of the supreme court, do hereby certify that on the 13th day of May, in the year of our Lord one thousand eight hundred and ninety-nine, a copy of the foregoing writ of error for the defendant in error was lodged in my office, at Springfield, Illinois.

Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.

Witness my hand and the seal of said court this 13th day of May, A. D. 1899.

CHRISTOPHER MAMER,
Clerk of Supreme Court.

[10 cent U. S. internal-revenue stamp, canceled May 13, 1899. C. M.]

d UNITED STATES OF AMERICA, *ss:*

To Leander J. McCormick, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Illinois, wherein Anthony F. Seeberger, Julius S. Grinnell, Simeon D. Busey, Conway H. Hillman, Charles G. Blanden, Arthur M. Barnhart, John Cudahy, Charles E. Simon, David A. Kohn, George B. Reeve, and Henry S. Boutell are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Henry B. Brown, associate justice of the Supreme Court of the United States, this 10th day of May, in the year of our Lord one thousand eight hundred and ninety-nine.

HENRY B. BROWN,
Associate Justice of the Supreme Court of the United States.

e Service of the within citation accepted this 12th day of May, A. D. 1899.

A. M. PENCE,
Att'y for L. J. McCormick, Def't in Error.

f In the Supreme Court of Illinois.

ANTHONY F. SEEBERGER, JULIUS S. GRINNELL, Simeon D. Busey, Conway H. Hillman, Charles G. Blanden, Arthur M. Barnhart, John Cudahy, Charles E. Simon, David A. Kohn, George B. Reeve, and Henry S. Boutell

vs.

LEANDER J. MCCORMICK.

Error to Appellate Court, First District.

I, Christopher Mamer, clerk of the supreme court, do hereby certify that on the 13th day of May, in the year of our Lord one thousand eight hundred and ninety nine, a copy of the foregoing citation and acceptance of service was lodged in my office, at Springfield, Illinois.

Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.

Witness my hand and the seal of said court this 13th day of May, A. D. 1899.

CHRISTOPHER MAMER,
Clerk of Supreme Court.

[Ten-cent U. S. internal-revenue stamp, canceled May 13, 1899. C. M.]

g In the Supreme Court of Illinois.

ANTHONY F. SEEBERGER, JULIUS S. GRINNELL, Simeon D. Busey, Conway H. Hillman, Charles G. Blanden, Arthur M. Barnhart, John Cudahy, Charles E. Simon, David A. Kohn, George B. Reeve, Henry S. Boutell

vs.

LEANDER J. MCCORMICK.

Error to Appellate Court, First District.

I, Christopher Mamer, clerk of the supreme court of Illinois, elected for the northern grand division, and keeper of the records and files thereof, by virtue of the foregoing writ of error and in obedience thereto do certify that the following pages, numbered from one (1) to one hundred and twenty-eight (128), inclusive, contain a true and complete transcript and copy of the record and proceedings had in said court in the case which is above entitled and of the whole thereof, including the opinion of the court, as the same remain of record and on file in my said office.

In testimony whereof I have hereunto set my hand and caused the seal of said supreme court of Illinois to be hereunto affixed, at Springfield, this thirteenth day of May, in the year of our Lord one thousand eight hundred and ninety-nine.

Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.

CHRISTOPHER MAMER,
Clerk of Supreme Court.

[Ten-cent U. S. internal-revenue stamp, canceled May 13, 1899. C. M.]

1 At a supreme court begun and held at Springfield, on Tuesday, the fifth day of April, in the year of our Lord one thousand eight hundred and ninety-eight, within and for the State of Illinois.

Present: Jesse J. Phillips, chief justice; Alfred M. Craig, justice; Benjamin D. Magruder, justice; Jacob W. Wilkin, justice; Joseph N. Carter, justice; James H. Cartwright, justice; Carroll C. Boggs, justice; Edward C. Akin, attorney general; Edward A. Baxter, sheriff.

Attest: CHRISTOPHER MAMER, *Clerk.*

Be it remembered, to wit, on the fourth day of April, A. D. 1898, there was filed in the office of the clerk of the said court a certain transcript of the record of the superior court of Cook county and of the appellate court of Illinois, first district; which said transcripts are in the words and figures following, viz:

2 UNITED STATES OF AMERICA.

STATE OF ILLINOIS, } ss:
County of Cook, }

Pleas before the Honorable John Barton Payne, one of the judges of the superior court of Cook county, in the State of Illinois, holding a branch court of said court, at a regular term of said superior court of Cook county, begun and holden at the court-house, in the city of Chicago, in said county and State, on the first Monday, being the fifth day, of April, in the year of our Lord one thousand eight hundred and ninety-seven, and of the Independence of the United States of America the one hundred and twenty-first.

Present: The Honorable John Barton Payne, judge of the superior court of Cook county; Charles S. Deneen, State's attorney; James Pease, sheriff of Cook county.

Attest: JOHN A. LINN, *Clerk.*

3 Be it remembered that heretofore, to wit, on the nineteenth day of November, in the year of our Lord one thousand eight hundred and ninety-five, there was filed in the office of the clerk of the superior court of Cook county a certain præcipe for summons; which is in the words and figures as follows, to wit:

STATE OF ILLINOIS, } ss:
County of Cook, }

In the Superior Court of Cook County, December Term, A. D. 1895.

LEANDER J. McCORMICK, Plaintiff, *vs.* ANTHONY F. SEEBERGER, WILLIAM COX, Julius S. Grinnell, Chas. H. Ferguson, Simeon H. Busey, Arthur M. Barnhart, Conway W. Hillman, John Cudahy, Charles G. Blanden, Charles E. Simons, Seneca D. Kimbark, Charles D. Seeberger, David A. Kohn, Seymour Walton, George R. Reeve, and Henry S. Bautell, Defendants.	Assumpsit. Damages, $35,000.00.

4 The clerk of said court will issue a summons in the above-entitled cause to said defendants in a plea of trespass upon the case upon promises, to the damage of said plaintiff in the sum of thirty-five thousand (35,000) dollars, direct the same to the sheriff of Cook county to execute, and make it returnable to the December term of said court, A. D. 1895.

PENCE & CARPENTER,
Plaintiff's Attorneys.

Chicago, November 19th, 1895.

To Stephen D. Griffin, Esq., clerk.

And afterwards, to wit, on the same day and year last aforesaid, there issued out of the office of the clerk of said court the people's writ of summons; which said writ, with the sheriff's return thereon endorsed, is in the words and figures as follows, to wit:

STATE OF ILLINOIS, } ss:
Cook County, }

The People of the State of Illinois to the sheriff of said county, Greeting:

5 We command you that you summon Anthony F. Seeberger, William Cox, Julius S. Grinnell, Charles H. Ferguson, Simeon H. Busey, Arthur M. Barnhart, Conway W. Hillman, John Cudahy, Charles G. Blanden, Charles E. Simons, Seneca D. Kimbark, Charles D. Seeberger, David A. Kohn, Seymour Walton, George B. Reeve, and Henry S. Boutell, if they shall be found in your county, personally to be and to appear before the superior court of Cook county, on the first day of the term thereof, to be holden at the court-house, in the city of Chicago, in said Cook county, on the first Monday of December next, to answer unto Leander J. McCormick in a plea of trespass on the case upon promises, to the damage of said plaintiff, as it is said, in the sum of thirty-five thousand dollars.

And have you then and there this writ, with an endorsement thereon in what manner you shall have executed the same.

6 Witness Stephen B. Griffin, clerk of our said court, and the seal thereof, at Chicago aforesaid, this 19th day of November, A. D. 1895.

[SEAL.] STEPHEN D. GRIFFIN, *Clerk.*

P'd, 1.00.

Served this writ on the within-named defendant, Anthony F. Seeberger, by delivering a copy thereof to him this 20th day of November, 1895.

Other within-named defendants not found in my county.

JAMES PEASE, *Sheriff,*
By W. H. JENKINS, *Deputy.*

And afterwards, to wit, on the 21st day of November, A. D. 1895, there was filed in the office of the clerk of said court a certain declaration, which is in the words and figures as follows, to wit:

STATE OF ILLINOIS, } ss:
County of Cook, }

In the Superior Court of Cook County.

7 LEANDER J. McCORMICK
vs.
ANTHONY F. SEEBERGER, WILLIAM COX, JULIUS S. GRINNELL, Charles H. Ferguson, Simeon H. Busey, Conway W. Hillman, Charles G. Bladen, Charles D. Seeberger, Arthur M. Barnhart, John Cudahy, Charles E. Simons, Seneca D. Kimbark, David A. Kohn, George Reeve, and Henry S. Boutell.

Leander J. McCormick, plaintiff in this suit, by Pence & Carpenter, his attorneys, complains of Anthony F. Seeberger, William Cox, Julius S. Grinnell, Charles H. Ferguson, Simeon H. Busey, Conway W. Hillman, Charles G. Bladen, Charles D. Seeberger, Arthur M. Barnhart, John Cudahy, Charles E. Simons, Seneca D. Kimbark, David A. Kohn, George B. Reeve, and Henry S. Boutell, copartners, doing business in Chicago, Illinois, under the firm name and style of the Market National Bank of Chicago, defendants in this suit, summoned, etc., of a plea of trespass on the case upon promeses:

8 For that whereas on, to wit, the 9th day of February, A. D. 1893, in said county of Cook, by a certain indenture then and there made between said plaintiff, of the one part, and the said defendants, of the other part, and bearing date of that day, the plaintiff did demise and lease unto said defendants certain rooms and offices in the first story of the building known as the Major block, located on the southeast corner of Madison and La Salle streets, in the city of Chicago, in said county, and more particularly described as the offices at that time occupied by the Hide & Leather

bank and the firm of R. S. Critchell & Co.; to have and to hold the same to said defendants, to be occupied by them as a banking office, from, to wit, May 1st, A. D. 1893, to April 30th, A. D. 1898, with the privelege, however, to either party to cancel said lease by giving ninety (90) days' prior notice in writing to the other party of the desire to terminate said lease on May 1st, A. D. 1895.

And the plaintiff avers that it was further stipulated in
9 and by said lease that said defendant- should pay said plaintiff a yearly rent of thirteen thousand ($13,000) dollars, payable in equal installments of one thousand and eighty-three and $\frac{33}{100}$ (1,083.33) dollars in gold or its equivalent monthly, on the first day of each and every month during and for said term, at the office of said plaintiff or in such other place in the city of Chicago, in said county, as plaintiff may direct.

And the plaintiff further avers that it was further stipulated in and by said lease that no charge should be made by said plamtiff for rent until said defendant should take possession of said premises.

And plaintiff avers that said indenture was duly executed by both said plaintiff and said defendants and was duly delivered by said defendants to said plaintiff.

And plaintiff avers also that in consideration of said demise and lease of the premises in said indenture contained, to be performed by said plaintiff, the said defendants undertook and promised to perform the same and all the conditions therein contained,
10 and, amongst other things, they undertook and promises that they, the said defendants, would well and truly pay or cause to be paid to said plaintiff the said yearly rent or sum of thirteen thousand (13,000) dollars per annum at the several days and times and places and in the installments aforesaid.

And said plaintiff further avers that on, to wit, June 22nd, A. D. 1893, said defendants entered upon and took possession of said premises and paid said plaintiff the rent for said premises to and including July 22nd, A. D. 1893; that afterwards, to wit, on or about August 1st, A. D. 1893, said defendants informed said plaintiff that they would not any longer be bound by or perform said contract or lease on their part, and they did then and there renounce said contract and thenceforth refused to treat it as subsisting and binding upon them, and announced to said plaintiff that they would not pay the next month's rent and they would not pay the rent falling due during any of the months during the term of said lease as they fell due or at any other time, and said defendants did then and there repudiate said contract or lease in all its parts and abandoned the same and neglected and refused to per-
11 form the same and refused without any reasonable or just cause to be bound by the same.

And plaintiff avers that he has always held fast to said contract and has always refused to treat the same as cancelled or abrogated in any way, and he has always insisted upon the performance thereof by said defendant according to its terms, and that the rent should be paid thereon in accordance with its terms, and that he

has always been ready, able, and willing to perform the same on his part and to furnish the possession of said premises unto said defendants without molestation, and has offered to perform said lease or contract and to perform all the obligations and duties required of him according to the terms thereof.

And plaintiff further avers that in accordance with the terms of said lease plaintiff did, on, to wit, January 28th, A. D. 1895, give notice in writing to said defendants of plaintiff's desire to cancel said lease on May 1st, A. D. 1895.

Yet said plaintiff avers that said defendants have never paid him any rent on account of said lease since the month of May,
12 A. D. 1893, and that there is now due to him on account of such non-performance of said contract or lease and on account of the total breach thereof, as aforesaid, and on account of the rent part due, with interest thereon, a large sum of money, to wit, thirty-five thousand ($35,000) dollars, and that the defendants have refused and do refuse to pay the same, and that by reason of such repudiation and non-performance the plaintiff avers that he has suffered great loss and damage:

For that whereas the said defendants also heretofore, to wit, on the first (1st) day of June, in the year of our Lord one thousand eight hundred and ninety-five, at Chicago, to wit, at the county aforesaid, became and still are indebted to the said plaintiff in the sum of thirty-five thousand (35,000) dollars of lawful money of the United States of America, for divers goods, wares, and merchandise by the said plaintiff before that time sold and delivered to the said defendants and at the special instance and request of the said defendants, and, being so indebted to the said plaintiff, the said defendants, in
13 consideration thereof, afterwards, to wit, on the same day and year and at the place aforesaid, undertook and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the sum of money last mentioned when the said defendants should thereunto afterwards — requested.

And whereas also the said defendants afterwards, to wit, on the same day and year, at the place aforesaid, in consideration that the said plaintiff had before that time, at the like special instance and request of the said defendants, sold and delivered to the said defendants divers other goods, wares, and merchandise of the said plaintiff, the said defendants then and there undertook and faithfully promised the said plaintiff that the said defendants would well and truly pay to the said plaintiff so much money as the last aforesaid goods, wares, and merchandise at the time of the sale and delivery thereof were reasonably worth when the said defendants should be thereunto afterwards requested; and the said plaintiff avers that the said goods, wares, and merchandise last mentioned at the time of the sale and delivery thereof were reasonably worth the further sum of thirty-five thousand (35,000) dollars of like lawful
14 money, as aforesaid, to wit, at the place aforesaid, whereof the said defendants afterwards, on the same day and year and at the place aforesaid, had notice.

And whereas also the said defendants afterwards, to wit, on the

same day and year and at the place aforesaid, were indebted to the said plaintiff in the further sum of thirty-five thousand (35,000) dollars of like lawful money, as aforesaid, for money before that time lent and advanced by the said plaintiff to the said defendants and at the like request of the said defendants, and in the like sum of other money by the said plaintiff before that time paid, laid out, and expended for the said defendants and at the like request of the said defendants, and in the like sum for other money by the said defendants before that time had an- received to and for the use of the said plaintiff, and in the like sum for other money before that time and then due and owing the said plaintiff for interest upon and for the forbearance of divers other sums of money before that time and then due and owing from said defendants to said plaintiff,
and in a like sum for the use and occupation of certain lands
15 and tenements of said plaintiff by the said defendants and
at their special instance and request, and in the like sum for the price and value of work then done and material for the same provided by the said plaintiff for the said defendants and at the like special request of the said defendants; and, being so indebted, the said defendants, in consideration thereof, afterwards, to wit, on the same day and year and at the place aforesaid, undertook and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the several sums of money in this count mentioned when the said defendants should be thereunto afterwards requested.

And whereas also the said defendants afterwards, to wit, on the day and year last aforesaid and at the place last aforesaid, accounted together with the said plaintiff of and concerning divers other sums of money before that time due and owing from the said defendants to said plaintiff and then and there being in arrear and unpaid, and upon such accounting the said defendants then and there were found to be in arrear and indebted to the said plaintiff in the further
sum of thirty-five thousand (35,000) dollars, of like lawful
16 money, as aforesaid; and, being so found in arrear and in-
debted to the said plaintiff, the said defendant-, in consideration thereof, afterwards, to wit, on the day and year last aforesaid and at the place last aforesaid, undertook and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the sum of money last mentioned when the said defendants should be thereunto afterwards requested;

Nevertheless the said defendants (although often requested, etc.) have not yet been paid the said several sums of money above mentioned, or any or either of them or any part thereof, to the said plaintiff, but to pay the same or any part thereof to the said plaintiff have hitherto altogether refused and still do refuse, to the damage of the said plaintiff of a large sum of money.

That, although plaintiff has kept and performed all things in said contract contained on his part to be kept and performed, the defendants have not performed said contract or lease or paid the various

sums of money above mentioned and refuse so to do, to the
17 damage to said plaintiff of thirty-five thousand (35,000) dollars; and therefore he brings suit, etc.

PENCE & CARPENTER,
Attorneys for Plaintiff.

Copy of Instrument Sued upon.

This is to certify that I, Leander J. McCormick, of the city of Chicago, county of Cook and State of Illinois, have demised and leased, and do hereby demise and lease, unto the Market National Bank of Chicago the offices now occupied by the Hide and Leather bank and Mess. R. S. Critchell & Co., not including office No. 4, on the first story of the building known as the Major block, situated on the S. E. corner of Madison ans La Salle streets, in the city of Chicago, State of Illinois, to be used and occupied by said Market national bank as a banking office, for the term of five years from the 1st day of May, 1893, to the 30th day of April, 1898, at the yearly rent of thirteen thousand $\frac{00}{100}$ (13,000) dollars, payable in equal installments of one thousand eighty-three $\frac{33}{100}$ (1,083.33)
18 dollars (in gold or its equivalent) monthly, on the last day of each and every month during and for the said term, at the office of Leander J. McCormick, in Chicago, or such other place in Chicago as the lessor may direct.

And it is a condition of this letting that the said lessee shall not assign this lease agreement, nor let or underlet said rooms or any part thereof, nor use the same or permit the same to be used for any other purpose than as above described, nor make any alteration therein without written consent of the lessor first had and obtained, and shall remain upon and be surrendered with the premises as a part thereof at the termination of this lease; and, further, that all personal property in the demised premises shall be at the risk of lessee only, and lessor shall not be liable for any damage to said personal property, to said premises, or to said lessee arising from bursting of water or steam pipes, or from any acts or neglect of cotenants or other occupants of the building or any other persons, and that the rules and regulations in regard to the said building which are printed on the other side hereof shall during the continu-
19 ance of this agreement be in all things observed and performed by the said lessee and his clerks and servants, and shall constitute and form a part of this lease.

It is also agreed that the lessee shall be furnished free of charge with heat from 8 a. m. until 6 p. m., Sundays and legal holidays excepted, from October 1st until May 1st from the apparatus for heating in the building, and it is understood and agreed that if, during the continuance of this agreement, the said premises shall be so injured by fire as to be rendered untenantable, then, in case such injury shall not be repaired by the lessor within thirty days thereafter, it shall be optional with either party hereto to cancel this agreement, and in case of any such cancellation the rent shall be

paid to the day of such fire, and no rent shall be collectable while the rooms are untenable.

In witness whereof I have hereunto set my hand and seal this 9th day of February, one thousand eight hundred and ninety-three.

——— ———.

Sealed and delivered in the presence of—
LEANDER J. McCORMICK,
By J. H. McC. [SEAL.]

20 This is to certify that we, The Market National Bank of Chicago, have hired and taken from Leander J. McCormick the rooms referred to in the foregoing instrument, at the rent and upon the other terms and conditions therein mentioned and set forth, and we hereby agree with said Leander J. McCormack to make punctual payments of the said rents as provided in the said instrument, and to do, observe, and perform in all things the conditions and agreements therein set forth to be observed and performed by us, and if default be made in the payment of rent or of any part thereof by us, such default shall of itself constitute a forfeiture of said lease and a forcible detainer, and in case of such default or of a default in the performance of any of said conditions and agreements or either of them, said Leander J. McCormick or his agent may re-enter the said premises and remove all persons therefrom, forcibly or otherwise, and all damages arising from so doing are hereby waived, and we hereby expressly waive any demand for such rent so in default or for the possession of said premises or of notice of any intention to re enter prescribed by any statute or law
21 whatever, but re-entry may be made or suit in forcible detainer, ejectment, or otherwise for possession of said premises may be maintained in consequence of any such default without any demand or notice prescribed by any statute or law whatever.

Said lessor shall have the right to alter and to improve or repair said building in which said room or rooms are located at any time, and he or his agent or employés shall have the right to enter said room or rooms at all reasonable hours to examine the same or to make such repairs, additions, or alterations as may be necessary for the safety, improvement, or preservation thereof or of said building, and we hereby release said Leander J. McCormick from all claims for damages caused in the past or that may be caused in the future by any alterations to said building or room or rooms, and we hereby consent that said Leander J. McCormick or his agent may exhibit the said premises and put and keep upon the doors or windows thereof a notice "For rent" at any time within three months before the expiration of this lease.

22 Witness our hands and seals this 9th day of February, 1893.

MARKET NATIONAL BANK, [SEAL.]
Per A. F. SEEBERGER, *President.* [SEAL.]

Attest: "WILLIAM COX, *Cashier.*"

Sealed and delivered in the presence of—
"MARK M. FOOTE."

Guarantee.

In consideration that the above-written lease was executed and delivered to the above-named lessee at request, and in further consideration of one dollar by — received of the above-named lessor, — hereby guarantee to the said lessor, his heirs and assigns, the performance by the said lessee, — executors, administrators, and assigns, of all the agreements and covenants in the said lease contained by the said lessee, — executors, administrators, and assigns, to be kept and performed.

—— —, 189–.

—— ——. [SEAL.]

23 *Rules and Regulations Referred to within.*

1. The entries, passages, stairways, and elevators shall not be obstructed by any of the tenants or used by them for any other purpose than ingress and egress to and from their respective rooms. No bulky article shall be carried up or down the building except on the elevator, and then at such hours as the janitor may appoint.

2. ——.

3. The water-closets and other water fixtures shall not be used for any purpose than those for which they were constructed, and any damage resulting to them from misuse or the defacing or injury of any part of the building shall be borne by the tenant who shall occasion it.

4. The light through the transoms opening into the halls shall not be obstructed by the lessee.

5. No tenant, his clerks or servants, shall use said rooms for sleeping purposes or disturb the other tenants by the use of any musical instruments, any unseemly noises, or by any interference in any way. Dogs or other animals shall not be allowed in the building.

24 6. No dust, rubbish, or litter shall be swept from any room into any of the halls except under the directions of the janitor, nor shall the same nor anything else be thrown or emptied from any of the windows of said building.

7. All tenants and occupants must observe strict care not to leave their windows open when it rains or snows, and for any default or carelessness in this respect shall make good all injury sustained by other tenants and to the owner for damage to the paint, plastering, or other parts of the building resulting from such default or carelessness.

8. ——.

9. ——.

10. All necessary keys will be furnished by lessor, to be returned by lessee *to* end of lease. Lessee will not have any duplicate keys made.

11. If lessee desires awnings or shades at the windows, to be erected at the lessee's expense, they must be of such uniform shape,

color, material, and make as may be prescribed by the agent of the building.

12. ——.

25 13. Furniture and packages required to be taken up in the elevator must be first unpacked in the room designated for that purpose by the janitor and carried through the building at such hours as the janitor may appoint.

14. No additional locks shall be placed upon any door of the building without the written consent of the lessor, first obtained and endorsed upon this lease.

15. The rent of an office will include occupancy of office, water in standing bowls, steam heat, and elevator service from 8 a. m. to 6 p. m., Sundays and legal holidays excepted, but lessor shall not be liable for any damage from the stoppage of the steam apparatus or elevator for necessary or desirable repairs of improvements.

16. The lessor reserves the right to enter upon any premises vacated by the lessee before the termination of lease to make repairs or alterations.

17. The lessor reserves the right to make such other and further reasonable rules and regulations as in his judgment may from time to time be needful for the safety, care, and cleanliness of the premises and for the preservation of good order therein.

CHICAGO, —— —, 189–.

26 Received of Leander J. McCormick — keys, being a complete set of keys to the premises referred to in the within lease.

—— ——.
—— ——.

And afterwards, to wit, on the 3rd day of December, A. D. 1895, there was filed in the office of the clerk of said court certain pleas, which are in the words and figures as follows, to wit:

STATE OF ILLINOIS, } *ss.*
Cook County, }

Superior Court Thereof, December Term, A. D. 1895.

ANTHONY F. SEEBERGER, Impleaded with WILLIAM Cox, Julius S. Grinnell, Charles H. Ferguson, Simeon H. Busey, Conway W. Hillman, Charles G. Blanden, Charles D. Seeberger, Seymour Walton, Arthur M. Barnhart, John Cudahy, Charles E. Simons, Seneca D. Kimbark, David A. Kohn, George B. Reeve, and Henry S. Boutell, *ats.* LEANDER J. MCCORMICK.	Assumpsit.

27 And this defendant, Anthony F. Seeberger, by Duncan & Gilbert, his attorneys, comes and defends the wrong and in-

jury, when, etc., and says that he did not undertake or promise in manner and form as the plaintiff has above thereof complained against him; and of this he puts himself upon the country, etc.

And, for a further plea in this behalf, the said defendant, Anthony F. Seeberger, says that the plaintiff ought not to have his aforesaid action against him, the said Anthony F. Seeberger, because he says that he is not, nor ever was, jointly liable with the said William Cox, Juli-s S. Grinnell, Charles H. Ferguson, Simeon H. Busey, Conway W. Hillman, Charles G. Blanden, Charles D. Seeberger, Seymour Walton, Arthur M. Barnhart, John Cudahy, Charles E. Simons, Seneca D. Kimbark, David A. Kohn, George B. Reeve, and Henry S. Boutell in respect of the several supposed causes of action in the said declaration mentioned, or any or either of them, in manner and form as the plaintiff has above in that behalf alleged; and of this the said defendant, Anthony F. Seeberger, put- himself upon the country, etc.

DUNCAN & GILBERT,
Defendants' Attorneys.

28 STATE OF ILLINOIS, } ss:
Cook County, }

Anthony F. Seeberger, the above-named defendant, being duly sworn, on his oath deposes and says that the foregoing second plea is true in substance and in fact.

ANTHONY F. SEEBERGER.

Subscribed and sworn to before me this 2nd day of December, A. D. 1895.

[NOTARY SEAL.] MATE B. BREWSTER,
Notary Public.

And afterwards, to wit, on the 10th day of July, A. D. 1896, there was filed in the office of the clerk of said court a certain amended declaration, which is in the words and figures as follows, to wit:

STATE OF ILLINOIS, } ss:
County of Cook, }

In the Superior Court of Cook County.

LEANDER J. MCCORMICK }
vs.
ANTHONY F. SEEBERGER. }

29 Now comes said plaintiff, by Pence & Carpenter, his attorneys, and, by leave of the court for that purpose first had and obtained, hereby amends the declaration in said cause by striking out the name of Seymour Walton wherever it appears in said declaration.

PENCE & CARPENTER,
Plaintiff's Attorneys.

And afterwards, to wit, on the 16th day of July, A. D. 1896, being one of the days of the July term of the superior court, the following, among other, proceedings were had and entered of record in said court, to wit:

LEANDER J. McCORMICK
vs.
ANTHONY F. SEEBERGER. } Assumpsit.

On motion of plaintiff's attorney, it is ordered that all papers and proceedings in said cause be, and are hereby, amended by discontinuing as to the defendant Seymour Walton without costs, and leave given the defendant, Anthony F. Seeberger, to withdraw his plae filed in said cause on the third day of December, A. D.
30 1895, and to file a new plea herein instanter.

And afterwards, to wit, on the 16th day of July, A. D. 1896, there was filed in the office of the clerk of said court certain pleas, which are in the words and figures as follows, to wit:

STATE OF ILLINOIS, } ss:
Cook County, }

Superior Court Thereof, July Term, A. D. 1896.

ANTHONY F. SEEBERGER, JULIUS S. GRINNELL, SIMEON H. Busey, Conway H. Hillman, Charles G. Blanden, Arthur M. Barnhart, John Cudahy, Charles E. Simons, David A. Kohn, George B. Reeve, and Henry Boutell, Impleaded with William Cox, Charles H. Ferguson, Charles D. Seeberger, and Seneca D. Kimbark,
als.
LEANDER J. McCORMICK. } Assumpsit.

And the defendants, Anthony F. Seeberger, Julius S. Grinnell, Simeon H. Busey, Conway W. Hillman, Charles G. Blanden,
31 Arthur M. Barnhart, John Cudahy, Charles E. Simons, David H. Kohn, George B. Reeve, and Henry S. Boutell, by Duncan & Gilbert, their attorneys, come and defend the wrong and injury, when, etc., and say that they did not undertake or promise in manner or form as the plaintiff has above thereof complained against them; and of this they put themselves upon the country, etc.

And for a further plea in this behalf the said defendants, Anthony F. Seeberger, Julius S. Grinnell, Simeon H. Busey, Conway W. Hillman, Charles G. Blanden, Arthur M. Barnhart, John Cudahy, Charles E. Simons, David A. Kohn, George B. Reeve, and Henry S. Boutell, say that the plaintiff ought not to have his aforesaid action against them, because they say that they are not nor ever were jointly liable with the said William Cox, Charles H. Ferguson, Charles D. Seeberger, and Seneca D. Kimbark or with each other in respect of the several supposed causes of action in the declaration

mentioned or any or either of them in manner or form as the plaintiff has above in that behalf alleged; and of this the said defendants, Anthony F. Seeberger, Julius S. Grinnell, Simeon H. Busey, Conway W. Hillman, Charles G. Blanden, Arthur M. Barn-
32 hart, John Cudahy, Charles E. Simons, David A. Kohn, George B. Reeve, and Henry S. Boutell, put themselves upon the country, etc.

DUNCAN & GILBERT,
Defendants' Attorneys.

STATE OF ILLINOIS, } ss:
Cook County, }

Anthony F. Seeberger, one of the above-named defendants, being duly sworn, on his oath deposes and says that the foregoing second plea is true in substance and in fact.

ANTHONY F. SEEBERGER.

Subscribed and sworn to before me this 6th day of July, A. D. 1896.

[NOTARY SEAL.] MATE B. BREWSTER,
Notary Public.

And afterwards, to wit, on the 1st day of May, A. D., 1897, being one of the days of the April term of the superior court, the following, among other, proceedings were had and entered of record in said court, to wit:

33 LEANDER J. McCORMICK
vs.
ANTHONY F. SEEBERGER, WILLIAM COX, JULIUS S. Grinnell, Charles H. Ferguson, Simeon H. Busey, Arthur M. Barnhart, Conway W. Hillman, John Cudahy, Charles E. Simons, Seneca D. Kimbark, Charles D. Seeberger, David A. Kohn, George B. Reeve, and Henry S. Boutell. } Assumpsit.

On the agreement of the parties to this suit, now here made in open court, this cause is submitted to the court for trial without a jury, and the court now hereafter hearing all the evidence adduced — the arguments of counsel, and, being fully advised in the premises, finds the issues for the defendants; to which the plaintiff excepts.

Therefore it is considered by the court that the defendants do have and recover of and from the plaintiff their costs and charges in this behalf expended and have execution therefor; whereupon the plaintiff, having entered his exceptions herein, prays an appeal from the judgment of this court to the appellate court in and
34 for the first district of Illinois, which is allowed on filing his personal bond in the sum of two hundred and fifty dollars, within thirty days from this date, and leave given said plaintiff to file his bill of exceptions within thirty days from this date.

And afterwards, to wit, on the 13th day of May, A. D. 1897, there was filed in the office of the clerk of said court a certain bill of exceptions, which is in the words and figures as follows, to wit:

STATE OF ILLINOIS, } ss.
County of Cook, }

In the Superior Court of Cook County, May Term, A. D. 1897.

LEANDER J. MCCORMICK
vs.
ANTHONY F. SEEBERGER, WILLIAM COX, JULIUS S. GRINNELL, Charles H. Ferguson, Simeon H. Busey, Conway W. Hillman, Charles G. Blanden, Charles D. Seeberger, Arthur M. Barnhart, John Cudahy, Charles E. Simons, Seneca D. Kimbark, David A. Kohn, Geo. B. Reeve, and Henry S. Boutell. } Gen'l No. 170,441.

35 Be it remembered that on the trial of the above-entitled cause before the court without a jury, a trial by jury having been waived by agreement of the parties, the plaintiff, to maintain the issues on his part, read in evidence a stipulation in the words and figures following, to wit:

STATE OF ILLINOIS, } ss.
County of Cook, }

In the Superior Court of Cook County.

LEANDER J. MCCORMICK
vs.
ANTHONY F. SEEBERGER ET AL. } Assumpsit.

1st. It is hereby stipulated and agreed by and between the parties to the above-entitled cause that a trial by jury in said cause shall be waived and said cause submitted to the court for trial upon the following facts, which, for the purposes of said trial, are to be taken as true: On the 31st day of January, A. D. 1893, Anthony F. Seeberger, Julius S. Grinnell, Charles H. Ferguson, Simeon H. Busey, Conway W. Hillman, William Cox, Charles G. Blanden, Charles D. Seeberger and Seymour Walton, for the purpose of forming a national banking association under the laws of the United States, entered into articles of association, which said articles were duly forwarded by them to the Comptroller of the Currency of the United States, and were by him duly filed in his office on the 3d day of February, A. D. 1893, and were and are in the words and figures following, to wit:

36 "Articles of association for the purpose of organizing an association to carry on the business of banking under the laws of the United States. The undersigned subscribers for the stock of the association hereinafter named do enter into the following articles of association:

First. The name and title of this association shall be 'The Market National Bank of Chicago, Illinois.'

Second. The place where its banking-house or office shall be located and its operations of discount and deposit carried on, and its general business conducted, shall be Chicago, Cook county, Illinois.

Third. The board of directors shall consist of fifteen shareholders and the following persons: Anthony F. Seeberger, Julius S. Grinnell, Charles H. Ferguson, Conway W. Hillman, George B. Reeve, Arthur M. Barnhart, John Cudahy, Charles E. Simmons, Seneca D. Kimbark, David A. Kohn, Simeon H. Busey, Henry S. Boutell, William Cox, Charles D. Seeberger, and Charles G. Blanden, having been duly elected directors of this association to hold their offices as such until the regular annual election takes place, pursuant to the fourth article of these articles of association, and until their successors are chosen and have qualified.

Fourth. The regular annual meetings of the shareholders for the election of directors shall be held at the banking-house of this association on the second Tuesday of January of each year: but if no election shall be held on that day, may be held on any other day according to the provisions of section 5149 of the Revised Statutes of the United States, and all elections shall be held according to such regulations as may be prescribed by the board of directors not inconsistent with the provisions of the national banking law and of these articles.

37 Fifth. The capital stock of this association shall be one million dollars, to be divided into shares of one hundred dollars each; but the capital may, with the approval of the Comptroller of the Currency, be increased at any time by shareholders owning two-thirds of the stock, according to the provisions of an act of Congress approved May 1, 1886; and in case of the increase of the capital of the association each shareholder shall have the privilege of subscribing for such numbers of shares of the proposed increase of the capital stock as he may be entitled to according to the number of shares owned by him before the stock is increased.

Sixth. The board of directors, a majority of whom shall be a quorum to do business, shall elect one of its members president of this association who shall hold his office (unless he shall be disqualified or be sooner removed by a two-thirds vote of all the members of the board) for the term for which he was elected a director.

The directors shall have power to elect a vice-president, who shall also be a member of the board of directors, and who shall be authorized, in the absence or inability of the president from any cause to perform all acts and duties pertaining to the office of president, except such as the president only is authorized by law to perform, and to elect or appoint a cashier and such other officers and clerks as may be required to transact the business of the association; to fix the salaries to be paid to them, and continue them in office or to dismiss them as, in the opinion of a majority of the board the interests of the association may demand.

The directors shall have power to define the duties of the officers

and clerks of the association, to require bonds from them,
38 and to fix the penalty thereof; to regulate the manner in which elections of directors shall be held; and to appoint judges of the elections; to make all by-laws that may be proper for them to make not inconsistent with law, for the general regulation of the business of the association and the management of its affairs, and generally to do and perform all acts that it may be legal for a board of directors to do and perform under the Revised Statutes aforesaid.

Seventh. This association shall continue for the period of twenty years from the date of the execution of its organization certificate, unless sooner placed in voluntary liquidation by the act of its shareholders owning at least two-thirds of its stock, or otherwise dissolved by authority of law.

Eighth. These articles of association may be changed or amended at any time by shareholders owning a majority of the stock of the association, in any manner not inconsistent with law; and the board of directors, or any three shareholders, may call a meeting of the shareholders for this or any other purpose, not inconsistent with law, by publishing notice thereof for thirty days in a newspaper published in the town, city or county where the bank is located, or by mailing to each shareholder notice in writing thirty days before the time fixed for the meeting.

In witness whereof we have hereunto set our hands this thirty-first day of January, eighteen hundred and ninety-three.

1. ANTHONY F. SEEBERGER, *Chicago, Illinois.*
2. JULIUS S. GRINNELL, do.
3. CHARLES H. FERGUSON, do.
4. SIMEON H. BUSEY, *Urbana, Ill.*
5. CONWAY W. HILLMAN, *Chicago, Ill.*
6. WILLIAM COX, " "
7. CHARLES G. BLANDEN, " "
8. CHARLES D. SEEBERGER, " "
9. SEYMOUR WALTON, " " "

39 I certify that the articles of association of the Market National Bank of Chicago are executed in duplicate; that one of the instruments so executed is the foregoing, and that the other, in all respects like the foregoing, is on file with said bank.

(Signed) WILLIAM COX, *Cashier.*

Chicago, January 31st, 1893.

On the same day said Anthony F. Seeberger, Julius S. Grinnell, Charles H. Ferguson, Simeon H. Busey, Conway W. Hillman, William Cox, Charles G. Blanden, Charles D. Seeberger and Seymour Walton did, under their hands, make an organization certificate, which said certificate was on the same day duly acknowledged before a notary public, and was, together with the acknowledgment thereof, authenticated by the seal of said notary, transmitted to the Comptroller of the Currency of the United States, who received the same on the 3d day of February, A. D. 1893, and duly recorded

and carefully preserved the same in his office on said 3d day of February, A. D. 1893, which said certificate was and is in the words and figures following, to wit:

Organization Certificate.

"We, the undersigned, whose names are specified in article fourth of this certificate, having associated ourselves for the purpose of organizing an association for carrying on the business of banking under the laws of the United States, do make and execute the following organization certificate:

First. The name of the association shall be "the Market National Bank of Chicago."

Second. The said association shall be located in the city of Chicago, county of Cook and State of Illinois, where its operations of discount and deposit are to be carried on.

Third. The capital stock of this association shall be one million dollars ($1,000,000), and the same shall be divided into ten thousand shares of one hundred dollars each.

Fourth. The name and residence of each of the shareholders of this association, with the number of shares held by each, are as follows:

Name.	Residence.	No. of shares.
1. Anthony F. Seeberger	Chicago, Ill.	250
2. Julius S. Grinnell	" "	20
3. Simeon H. Busey	Urbana, Ill.	100
4. Charles H. Ferguson	Chicago, Ill.	250
5. Conway W. Hillman	" "	200
6. William Cox	" "	25
7. Charles G. Blanden	" "	9,095
8. Charles D. Seeberger	" "	10
9. Seymour Walton	" "	50
Total		10,000

Fifth. This certificate is made in order that we may avail ourselves of the advantages of the aforesaid laws of the United States.

In witness whereof, we have hereunto set our hands this thirty-first day of January, 1893.

1. ANTHONY F. SEEBERGER.
2. JULIUS S. GRINNELL.
3. SIMEON H. BUSEY.
4. CHARLES H. FERGUSON.
5. CONWAY W. HILLMAN.
6. WILLIAM COX.
7. CHARLES G. BLANDEN.
8. CHARLES D. SEEBERGER.
9. SEYMOUR WALTON.

41 STATE OF ILLINOIS, }
County of Cook, } ss:

On this, the thirty-first day of January, A. D. 1893, before me, a notary public of Cook county, and State of Illinois, personally came Anthony F. Seeberger, Julius S. Grinnell, Simeon H. Busey, Charles H. Ferguson, Conway W. Hillman, William Cox, Charles G. Blanden, Charles D. Seeberger and Seymour Walton, to me well known, who severally acknowledged that they executed the foregoing certificate for the purposes therein mentioned.

Witness my hand and seal of office, thirty-first of January, and year aforesaid.

(Signed) JOHN KIDSTON,
[SEAL OF NOTARY.] *Notary Public.*

2nd. At a meeting of the directors of said Market national bank, chosen by the shareholders thereof, and named in said articles of association, which said meeting was held on the 31st day of January, A. D. 1893, said A. F. Seeberger was duly elected president of said bank and William Cox was duly elected cashier thereof.

3rd. On the 9th day of February, A. D. 1893, the said A. F. Seeberger, in the name of said Market national bank and as president thereof, in pursuance of a resolution of the board of directors of said Market national bank, purporting by its terms to authorize him so to do, entered into a lease in writing with said Leander J. McCormick of certain premises to be used as a banking-room and place of business by said Market national bank, which said lease with certain papers attached thereto were and are in the words and figures following, to wit:

42 This is to certify, that I, Leander J. McCormick, of the city of Chicago, county of Cook and State of Illinois, have demised and leased and do hereby demise and lease unto the Market National Bank of Chicago, the offices now occupied by the Hide and Leather bank and Messrs. R. S. Critchell & Co., not including office No. 4, on the first story of the building known as the Major block, situated on the S. E. corner of Madison and La Salle streets, in the city of Chicago, State of Illinois, to be used and occupied by said Market national bank as a banking office, and for no other purpose, for the term of five years from the 1st day of May, 1893, to the 30th day of April, 1898, at the yearly rent of thirteen thousand $\frac{00}{100}$ ($13,000) dollars, payable in equal installments of one thousand, eighty-three $\frac{33}{100}$ (1,083.33) dollars (in gold or its equivalent) monthly on the last day of each and every month during and for the said term, at the office of Leander J. McCormick, in Chicago, or such other place in Chicago as the lessor may direct.

And it is a condition of this letting, that the said lessee shall not assign this lease agreement, nor let nor underlet said rooms, or any part thereof, nor use the same or permit the same to be used for any other purpose than as above described, nor make any alterations therein without written consent of the lessor first had and obtained, and shall remain upon and be surrendered with the premises

as a part thereof at the termination of this lease; and further, that all personal property in the demised premises shall be at risk of lessee only, and lessor shall not be liable for any damage to said personal property, to said premises or to said lessee, arising from bursting of water or steam pipes, or from any acts or neglect
43 of cotenants or other occupants of the building or any other persons, and that the rules and regulations in regard to said building which are printed on the other side hereof, shall during the continuance of this agreement, be in all things observed and performed by the said lessee and his clerks and servants, and shall constitute and form a part of this lease.

It is also agreed that the lessee shall be furnished free of charge with heat from 8 a. m. until 6 p. m., Sundays and legal holidays excepted, from October 1st until May 1st, from the apparatus for heating in the building, and it is understood and agreed that if, during the continuance of this agreement, the said premises shall be so injured by fire as to be rendered untenantable, then in case such injury shall not be repaired by the lessor within thirty days thereafter, it shall be optional with either party to cancel this agreement, and in case of any such cancellation, the rent shall be paid to the day of such fire, and no rent shall be collectible while the rooms are untenantable.

In witness whereof, I have hereunto set my hand and seal this 9th day of February, one thousand eight hundred and ninety-three.

(Signed) LEANDER J. McCORMICK, [SEAL.]
By R. H. McC.

Sealed and delivered in the presence of—
—— ——.

This is to certify, that we, the Market National Bank of Chicago, have hired and taken from Leander J. McCormick, the room referred to in the foregoing instrument, at the rent and upon the other terms and conditions therein mentioned and set forth; and we hereby
44 agree with said Leander J. McCormick to make punctual payments of the said rent as provided in the said instrument, and to do, observe and perform in all things the conditions and agreements therein set forth to be observed and performed by us, and if default be made in the payment of rent or of any part thereof by us such default shall of itself constitute a forfeiture of said lease and a forcible detainer, and in case of such default or of a default in the performance of any of said conditions and agreements, or either of them, said Leander J. McCormick or his agent may re-enter the said premises and remove all persons therefrom forcibly or otherwise, and all damages arising from so doing are hereby waived, and we hereby expressly waive any demand for such rent so in default or for the possession of said premises, or of notice of any intention to re-enter, prescribed by any statute or law whatever, but re-entry may be made, or suit in forcible detainer, ejectment or otherwise for possession of said premises may be maintained in consequence of

any such default without any demand or notice prescribed by any statute or law whatever.

Said lessor shall have the right to alter, add to, improve or repair said building in which said room or rooms are located at any time, and he or his agent or employés shall have the right to enter said room or rooms at all reasonable hours to examine the same, or to make such repairs, additions or alterations as may be necessary for the safety, improvement or preservation thereof, or of said building, and we hereby release said Leander J. McCormick from all claims for damages caused in the past or that may be caused in the future by any alterations to said building or room or rooms. And
45 we hereby consent that said Leander J. McCormick or his agent may exhibit the said premises, and put and keep upon the doors or windows thereof a notice "For rent" at any time within three months before the expiration of this lease.

Witness our hands and seals this 9th day of February, 1893.

MARKET NATIONAL BANK, [SEAL.]
Per A. F. SEEBERGER, *President.* [SEAL.]

Sealed and delivered in presence of—
MARK M. FOOTE.

[Market National Bank Seal, Chicago, Ill.]

Attest: WILLIAM COX, *Cashier.*

Guarantee.

In consideration that the above-written lease was executed and delivered to the above-named lessee at — request, and in further consideration of one dollar by — received of the above-named lessor — hereby guarantee to the said lessor, his heirs and assigns, the performance by the said lessee — executors, administrators and assigns, of all the agreements and covenants in the said lease contained by the said lessee, — executors, administrators and assigns to be kept and performed.

—— —, 189–.

—— ——. [SEAL.]

46 *Assignment and Acceptance.*

For value received, — hereby assign all — right, title and interest in and to the within lease unto —— heirs and assigns, and in consideration of the consent to this assignment by the lessor, — guarantee the performance by said —— —— of all the covenants on the part of the second party in said lease mentioned.

In consideration of the above assignment and written consent of the party of the first part thereto — hereby assume and agree to make all the payments and perform all the covenants and conditions of the within lease, by said party of the second part to be made and performed.

Witness — hand- and seal- this — day of ——, A. D. 189–.

—— ——. [SEAL.]
—— ——. [SEAL.]
—— ——. [SEAL.]

Consent to Assignment.

— hereby consent to the assignment of the within lease to —— —— on the express condition, however, that the assignor shall remain liable for the prompt payment of the rent and performance of the covenants on the part of the second party as herein mentioned, and that no further assignment of said lease or subletting of the premises, or any part thereof, shall be made without — written assent first had thereto.

Witness — hand and seal this — day of ——, A. D. 189–.

—— ——. [SEAL.]

47 *Rules and Regulations Referred to within.*

1. The entries, passages, stairways, and elevators shall not be obstructed by any of the tenants, or used by them for any other purpose than ingress and egress to and from their respective rooms. No bulky articles shall be carried up or down the building except on the elevator, and then at such hours as the janitor may appoint.

2. ——.

3. The water-closets and other water fixtures shall not be used for any purpose other than those for which they were constructed, and any damage resulting to them from misuse, or the defacing or injury of any part of the building shall be borne by the tenant who shall occasion it.

4. The light through the transoms opening into the halls shall not be obstructed by the lessee.

5. No tenant, his clerks or servants, shall use said rooms for sleeping purposes or disturb the other tenants by the use of any musical instruments, any unseemly noises, by any interference in any way. Dogs or other animals shall not be allowed in the building.

6. No dust, rubbish or litter shall be swept from any room into any of the halls, except under the directions of the janitor; nor shall the same nor anything else be thrown or emptied from any of the windows of said building.

7. All tenants and occupants must observe strict care not to leave their windows open when it rains or snows; and for any default or carelessness in this respect shall make good all injury sustained by other tenants, and to the owner for damage to the paint, plastering or other parts of the building resulting from such default or carelessness.

48 8. ——.

9. ——.

10. All necessary keys will be furnished by lessor, to be returned by lessee at end of lease. Lessee will not have any duplicate keys made.

11. If lessee desires awnings or shades at the windows, to be erected at lessee's expense, they must be of such uniform shape, color, material and make as may be prescribed by the agent of the building.

12. ——.

13. Furniture and packages required to be taken up in the elevator must be first unpacked in the room designated for that purpose by the janitor, and carried through the building at such hours as the janitor may appoint.

14. No additional locks shall be placed upon any doors of the building without the written consent of the lessor first obtained and endorsed upon this lease.

15. The rent of an office will include occupancy of office, water in standing bowls, steam heat and elevator service from 8 a. m. to 6 p. m., Sundays and legal holidays excepted, but lessor shall not be liable for any damages from the stoppage of the steam apparatus or elevator for necessary or desirable repairs or improvements.

16. The lessor reserves the right to enter upon any premises vacated by the lessee before the termination of lease, to make repairs or alterations.

17. The lessor reserves the right to make such other and further reasonable rules and regulations as in his judgment may from time to time be needful for the safety, care and cleanliness of the premises, and for the preservation of good order therein.

49 CHICAGO, —— —, 189-.

Received from Leander J. McCormick — keys, being a complete set of keys to the premises referred to in the within lease.

—— ——.

(Endorsement:) Lease. Major building. Lessee, the Market National Bank of Chicago. Banking office. From May 1st, 1893, to April 30th, 1898. Yearly rental, $13,000; monthly rental, $1,083.33.

The following was attached to said lease:
Leander J. McCormick, 84 La Salle St., Chicago.

In connection with the lease hereto attached it is further understood and agreed:

That the lessor, Leander J. McCormick, shall make the following alterations and repairs at his expense, to wit:

New plate-glass window to be put in at the corner entrance, all windows to be replaced with large lights of plate glass with transom over each, a large window or entrance to be put in at the head of the main stairs. Interior of bank office to be painted or grained in imitation of oak, and room is to be papered in good style, new
50 hard-wood floor to be put down in the working portion of bank and white marble or other tile to be put down for floor in public portion of the office.

Steam radiators to be put in where needed, and neat combination gas and electric fixtures and wiring to be put in where required. Exterior of building to be painted before July 1, 1893. No charge for steam heat, but electric light and gas to be paid for by the bank. Space just east of the east vault is to be made into a good water-closet for bank employés.

And it is further understood and agreed that both landlord and tenant can cancel this lease by either party giving ninety (90) days' prior notice in writing to the other of desiring termination of said lease on May 1st of 1895, 1896 or 1897. The lessee shall have the privilege of subletting the Critchell office, if they so desire, subject to the other conditions of the lease. No charge for rent to be made until lessee takes possession of the premises.

MARKET NATIONAL BANK, [SEAL.]
Per A. F. SEEBERGER, *President.* [SEAL.]

LEANDER J. McCORMICK,
By R. H. Mc. C.

{ Market National Bank, Chicago, Illinois, }
{ Chicago, February 9th, 1893. }

51 The following was attached to said lease:

TREASURER'S OFFICE OF THE
WORLD'S COLUMBIAN EXPOSITION.

A. F. Seeberger, treasurer, room 458, No. 160 Adams St.

CHICAGO, *April 12th*, 1893.

Leander J. McCormick, Esq., 84 La Salle St., city.

DEAR SIR: Referring to your communication of even date, regarding the changes to be made in the vaults in the banking-rooms known as the "Hide & Leather bank" and the Critchell & Company's offices immediately adjoining said banking-room on the south, and which the Market national bank have rented from you under lease dated February 9th, 1893, would say that the conditions therein contained are hereby accepted and will be attached to the lease executed by you to the Market national bank.

Yours, respectfully, MARKET NATIONAL BANK,
By A. F. SEEBERGER, *President.*

The following was attached to said lease:

Leander J. McCormick, 84 La Salle St., Chicago.

The Market national bank, Chicago, Ill.

GENTLEMEN: Recognizing the fact that it is difficult for you to divide up your office in a suitable manner, I wish to suggest that the west two vaults heretofore used by the Hide & Leather
52 bank and Critchell & Co., and the partition wall between the two offices be entirely removed on the first story, and a new vault be arranged in the small south office heretofore occupied by Critchell & Co., and known as room # 4. The new vault referred to is to be constructed by bricking up with cement all openings in room # 4, and a new twelve-inch wall to be built inside of said room, leaving a four-inch air space between the present wall and the one to be erected. The ceiling and floor of vault to be used by the bank is to be constructed with "I" beams and brick arch. In order to

show my liberality in the premises, I will hereby agree to make the proposed changes provided you will pay one-half the cost of said changes. I will make no charge for the office until such changes are completed.

Yours truly,

LEANDER J. McCORMICK,
By R. HALL McCORMICK.

We propose to do the above work for $2,475.

ANGUS & GINDELE.

4th. Subsequently calls were made by the board of directors of said Market national bank upon the shareholders thereof for payments on account of their subscriptions to the said capital stock. A portion of the said shareholders never paid any portion of their subscriptions, while others paid a portion of the amount called for, and others paid the entire amount due upon their subscriptions. Of the entire capital stock of $1,000,000 provided for in said articles of association no more than the sum of $331,594 was ever paid in.

5th. On the 22d day of June, A. D. 1893, the said president and cashier of said Market National Bank of Chicago, in the name of said Market National Bank of Chicago, took possession of
53 the premises demised and leased to it under said lease hereinbefore mentioned, the said premises not having been until that time ready for occupancy, and the possession thereof having, until then, been retained by said Leander J. McCormick with the full consent and approval of the officers of said bank for the purpose of putting said demised premises in a condition suitable for the occupation and use of said Market National Bank of Chicago, which the said Leander J. McCormick did do in manner provided in said lease, and the said cashier of said Market National Bank of Chicago on said day paid to said Leander J. McCormick the rent accruing under said lease down to the 22d day of July, A. D. 1893.

6th. Said Market National Bank of Chicago never was authorized by the Comptroller of the Currency to commence the business of banking, and never did commence the business of banking.

7th. The said Leander J. McCormick at the time of the negotiations prior to the execution of said lease and at the time of the execution of said lease, and at the time when said officers of said Market National Bank of Chicago took possession of the demised premises on the 22d day of June, A. D. 1893, understood and believed that said Market National Bank of Chicago was duly and legally organized as a national bank, and that as such it was ready to do a banking business, and that it had the power to enter into said lease and the agreements connected therewith, and had no knowledge or information to the contrary until the 15th day of August, A. D. 1893, at which time the officers of the said Market National Bank of Chicago informed said McCormick that said Market National Bank of Chicago had no power to enter into
54 said lease and offered to surrender to said McCormick said demised premises and said lease, and the said McCormick was then and there informed by the said officers of said Market

National Bank of Chicago that said Market National Bank of Chicago had never been authorized by the Comptroller of the Currency to commence the business of banking, but nevertheless said McCormick then and there refused to accept such surrender.

8th. After the execution of said lease it was agreed by and between the officers of said Market National Bank of Chicago and said Leander J. McCormick in pursuance of a resolution of the board of directors of said Market National Bank of Chicago purporting by its terms to authorize the same, that the said Market National Bank of Chicago would pay one-half of the cost of changing the offices and building the vault, &c., in said demised premises; and thereafter said premises were changed in accordance with said agreement by said Leander J. McCormick at a cost of $2,475, which was paid by him and no part of which was ever repaid to him by said Market National Bank of Chicago, said agreement having been entered into and said changes having been made prior to the 22d day of June, A. D. 1893.

9th. Prior to the execution of said lease officers of said Market National Bank of Chicago were elected by its board of directors who also caused a seal to be made for said bank. The name of said bank was signed to said lease by its president and its corporate seal was attached thereto. The officers of said Market National Bank of Chicago from time to time signing themselves in their official capacity corresponded with said Leander J. McCormick, using in such correspondence letter-heads or stationery with the name
55 of the Market national bank, its location and place of business and the name of its officers printed thereon, and said letters were signed either by the president or by the cashier of said bank.

10th. The officers of said Market National Bank of Chicago after having taken possession of the premises demised and leased to it and during the month of June, A. D. 1893, put into said premises the necessary fixtures and furniture required to carry on a banking business, and also a quantity of blank books and stationery suitable for use in carrying on a banking business, which said fixtures, furniture, blank books and stationery so placed in said premises were not removed therefrom until the 30th day of April, A. D. 1895.

11th. On the 20th day of September, A. D. 1893, the said A. F. Seeberger caused to be left with R. Hall McCormick, the duly authorized agent of said Leander J. McCormick, the key to said banking office, by throwing the same upon the desk of said R. Hall McCormick, or upon the desk of some one in his presence, but the said R. Hall McCormick at that time refused to accept the same, or to accept the surrender of said lease. Said key was, however, left by said Seeberger in the office of said R. Hall McCormick.

12th. On the 4th day of October, A. D. 1893, an agreement was entered into in pursuance of which said Leander J. McCormick ever since said date has had, and retained possession of said premises mentioned in said lease, which said agreement was and is in the words and figures following, to wit:

This agreement, made this fourth day of October, A. D. 1893, by and between the Market National Bank of Chicago, Illinois,
56 party of the first part, and Leander J. McCormick, of Chicago, Illinois, party of the second part, witnesseth—that:

Whereas, a controversy exists between said parties in reference to the liability of said first party for rent of the offices in the Major block, formerly occupied by the Hide and Leather bank and Messrs. R. S. Critchell & Co. (not including office No. 4), at the southeast corner of Madison and La Salle streets, in Chicago, Illinois, under a certain instrument dated February 9, 1893, and purporting to be a lease executed by said parties, and

Whereas, it is the desire of both of said parties pending the settlement of said controversy, either by suit or otherwise, that said offices should not remain vacant, and the rent thereof be wholly lost:

Now, therefore, in consideration thereof, it is agreed by and between the parties that said party of the second part shall take possession of said offices and use his best endeavors to lease the same on such terms as may be satisfactory to both parties, and collect the rent thereof, and that such taking possession and leasing of said offices shall not, nor shall anything herein contained, prejudice either of said parties in respect to said controversy, nor in any manner affect the rights of either party, excepting that in case said party of the second part shall ultimately establish a right to hold said party of the first part liable for the rent of said offices, the amount of rent provided for by any lease that may be made by said party of the second part in pursuance of this agreement shall be applied to reduce *pro tanto* such liability of said party of the first part.

In witness whereof, said party of the second part has here-
57 unto set his hand, and said party of the first part has caused its name to be signed by its president the day and year first above written.

MARKET NATIONAL BANK,
By A. F. SEEBERGER, *President.*
LEANDER J. McCORMICK.

We, the undersigned, a committee appointed at a meeting of the directors of the Market national bank, held July 22, 1893, to settle the outstanding indebtedness of said Market national bank, do hereby, in our own behalf as well as in behalf of all other persons interested therein approve of the foregoing agreement this fourth day of October, A. D. 1893. This approval, however, is not to be construed, used or taken as any acknowledgment of our liability upon said lease in said agreement mentioned.

A. F. SEEBERGER.
A. M. BARNHART.

I assent to the foregoing and agree that I will not use the same to create any liability against said Seeberger and Barnhart or either of them, that would not exist had they not signed their name thereto.

LEANDER J. McCORMICK.

That said Leander J. McCormick made every effort to rent and obtain a tenant for said premises, pursuant to the above agreement, and was unable so to rent them or obtain a tenant for them.

13th. On the 15th day of August, A. D. 1893, said Leander J. McCormick was duly notified by said A. F. Seeberger of the abandonment of all further proceedings with respect to the carrying on by said Market National Bank of Chicago of a banking business,
58 and that said Market National Bank of Chicago would not occupy the said premises demised in said lease, and that he, said Leander J. McCormick, was at liberty at any time to take possession of said premises, but nevertheless, ever since said date and down to the first day of May, A. D. 1895, said Leander J. McCormick has refused to accept a surrender of said lease and said Market National Bank of Chicago has refused to occupy the demised premises thereunder or to pay the rent provided for in said lease, and accruing subsequent to July 22, 1893, and said demised premises thereafter remained vacant and unoccupied until October 4, A. D. 1893, when they were taken possession of by said Leander J. McCormick in pursuance of the agreement of October 4, A. D. 1893, hereinbefore mentioned.

14th. On the 15th day of July, A. D. 1893, the said Anthony F. Seeberger, Julius S. Grinnell, Charles H. Ferguson, Simeon H. Busey, Conway W. Hillman, William Cox, Charles G. Blanden, Charles D. Seeberger and Seymour Walton, executed and signed a certificate revoking the above-mentioned articles of association and organization certificate and transmitted the same to the Comptroller of the Currency, who received and placed the same on file in his office.

15th. On the same day Anthony F. Seeberger, William Cox, Conway W. Hillman, Arthur M. Barnhart, George W. Reeve, Charles H. Ferguson, Julius S. Grinnell, Henry S. Boutell, John Cudahy, David A. Kohn, John A. Sweet and De Forest Skinner, for the purpose of forming a national banking association under the laws of the United States, entered into articles of association, which said articles were duly forwarded to the Comptroller of the
59 Currency of the United States, and were by him filed in his office on the 18th day of July, A. D. 1893, and were and are in the words and figures following, to wit:

Articles of Association.

For the purpose of organizing an association to carry on the business of banking, under the laws of the United States, the undersigned subscribers for the stock of the association hereinafter named do enter into the following articles of association:

First. The name and title of this association shall be "The Market National Bank of Chicago, Illinois."

Second. The place where its banking-house or office shall be located, and its operations of discount and deposit carried on, and its general business conducted, shall be *Chicago, Cook county, Illinois.*

Third. The board of directors shall consist of not less than nine nor more than twenty-one shareholders. And the following persons, Anthony F. Seeberger, Julius S. Grinnell, Charles H. Ferguson, Conway W. Hillman, George B. Reeve, Arthur M. Barnhart, John Cudahy, David A. Kohn, Simeon H. Busey, Henry S. Boutell, John A. Sweet and De Forest Skinner, have been duly elected directors of this association, to hold their offices as such until the regular annual election takes place, pursuant to the fourth articles of these articles of association, and until their successors are chosen and have qualified.

Fourth. The regular annual meetings of the shareholders for the election of directors shall be held at the banking-house of this association on the second Tuesday of January of each year. But if no election shall be held on that day, it may be held on any
60 other day, according to the provisions of section 149 of the Revised Statutes, and all elections shall be held according to such regulations as may be prescribed by the board of directors, not inconsistent with the provisions of the national banking law and of these articles.

Fifth. The capital stock of this association shall be five hundred thousand dollars, to be divided into shares of one hundred dollars each; but the capital may, with the approval of the Comptroller of the Currency, be increased at any time by shareholders owning two-thirds of the stock, according to the provisions of an act of Congress approved May 1, 1886; and in case of the increase of the capital of the association, each shareholder shall have the privilege of subscribing for such number of shares of the proposed increase of the capital stock as he may be entitled to according to the number of shares owned by him before the stock is increased.

Sixth. The board of directors, a majority of whom shall be a quorum to do business, shall elect one of their members president of this association, who shall hold his office (unless he shall be disqualified, or be sooner removed by a two-thirds vote of all the members of the board) for the term for which he was elected a director. The directors shall have power to elect a vice-president, who shall also be a member of the board of directors, and who shall be authorized, in the absence or inability of the president, from any cause, to perform all acts and duties pertaining to the office of president, except such as the president only is authorized by law to perform, and to elect or appoint a cashier, and such other officers and clerks as may be required to transact the business of the association; to fix the salaries to be paid to them, and continue
61 them in office, or to dismiss them as, in the opinion of a majority of the board, the interests of the association may demand.

The directors shall have power to define the duties of the officers and clerks of the association, to require bonds from them, and to fix the penalty thereof; to regulate the manner in which elections of directors shall be held, and to appoint judges of the elections; to make all by-laws that it may be proper for them to make not inconsistent with law, for the general regulation of the business of

the association and the management of its affairs, and generally to do and perform all acts that it may be legal for a board of directors to do and perform under the Revised Statutes aforesaid.

Seventh. This association shall continue for the period of twenty years from the date of the execution of its organization certificate, unless sooner placed in voluntary liquidation by the act of its shareholders owning at least two-thirds of its stock, or otherwise dissolved by authority of law.

Eighth. These articles of association may be changed or amended at any time by shareholders owning a majority of the stock of the association, in any manner not inconsistent with law; and the board of directors, or any three shareholders, may call a meeting of the shareholders for this or any other purpose, not inconsistent with law, by publishing a notice thereof for thirty days in a newspaper published in the town, city or county where the bank is located, or by mailing to each shareholder notice in writing thirty days before the time fixed for the meeting.

In witness whereof we have hereunto set our hands this — day of ——, eighteen hundred and ninety- —.

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1. ANTHONY F. SEEBERGER, *Chicago, Illinois.*
2. WILLIAM COX, " "
3. CONWAY W. HILLMAN, " "
4. ARTHUR M. BARNHART, " "
5. GEO. B. REEVE, " "
6. CHAS. H. FERGUSON, " "
7. JULIUS S. GRINNELL, " "
8. HENRY S. BOUTELL, " "
9. JOHN CUDAHY, " "
10. DAVID A. KOHN, " "
11. JOHN A. SWEET, " "
12. DE FOREST SKINNER, *Valparaiso, Indiana.*
13. (Mr. Busey to sign.)

I certify that the articles of association of the Market National Bank of Chicago, Ill., are executed in duplicate; that one of the instruments so executed is the foregoing, and that the other, in all respects like the foregoing, is on file with said bank.

July fifteenth, 1893.

(Signed) WILLIAM COX, *Cashier.*

16th. On the 15th day of July, A. D. 1893, the same persons, together with Charles G. Blanden, did under their hands make an organization certificate, which said certificate was duly acknowledged before a notary public, and was, together with the acknowledgment thereof, authenticated by the seal of said notary, transmitted to the Comptroller of the Currency of the United States, who received the same on the 20th day of July, A. D. 1893, and duly recorded the same in his office, and said certificate was and is in the words and figures following, to wit:

63 *Organization Certificate.*

We, the undersigned, whose names are specified in article 4th of this certificate, having associated ourselves for the purpose of organizing an association for carrying on the business of banking, under the laws of the United States, do make and execute the following organization certificate:

First. The name of the association shall be "The Market National Bank of Chicago."

Second. The said association shall be located in the city of Chicago, county of Cook, and State of Illinois, where its operations of discount and deposit are to be carried on.

Third. The capital stock of this association shall be five hundred thousand dollars ($500,000), and the same shall be divided into five thousand shares of one hundred dollars each.

Fourth. The name and residence of each of the shareholders of this association, with the number of shares held by each, are as follows:

Name.	Residence.	No. of shares.
Anthony F. Seeberger	Chicago, Illinois	250
William Cox	" "	25
Conway W. Hillman	" "	200
Arthur M. Barnhart	" "	150
Geo. B. Reeve	" "	100
Charles H. Ferguson	" "	250
Henry S. Boutell	" "	100
John Cudahy	" "	100
Simeon H. Busey	Urbana, "	100
David A. Kohn	Chicago, "	100
John A. Sweet	" "	50
Julius S. Grinnell	" "	20
De Forest Skinner	Valparaiso, Ind.	100
Charles G. Blanden	Chicago, Illinois	3,455
		5,000

64 Fifth. This certificate is made in order that we may avail ourselves of the advantages of the aforesaid laws of the United States.

In witness whereof, we have hereunto set our hands, this fifteenth day of July, 1893.

ANTHONY F. SEEBERGER.	JOHN CUDAHY.
WILLIAM COX.	SIMEON H. BUSEY.
CONWAY W. HILLMAN.	DAVID A. KOHN.
ARTHUR M. BARNHART.	JOHN A. SWEET.
GEO. B. REEVE.	JULIUS S. GRINNELL.
CHAS. H. FERGUSON.	DE FOREST SKINNER.
HENRY S. BOUTELL.	CHARLES G. BLANDEN.

STATE OF ILLINOIS, } ss:
County of Cook, }

On this, the fifteenth day of July, A. D. 1893, before me, a notary public, of Chicago, Ill., personally came Anthony F. Seeberger, William Cox, Conway W. Hillman, Arthur M. Barnhart, Geo. B. Reeve, Chas. H. Ferguson, Henry S. Boutell, John Cudahy, Simeon H. Busey, David A. Kohn, John A. Sweet, Julius S. Grinnell, De Forest Skinner, Chas. G. Blanden, to me well known, who severally acknowledged that they executed the foregoing certificate for the purposes therein mentioned.

Witness my hand and seal of office the day and year aforesaid.

WILLIAM H. POWELL,
Notary Public.

[SEAL OF NOTARY.]

17th. On the 25th day of July, A. D. 1893, the said Anthony F. Seeberger, William Cox, Conway W. Hillman, Arthur M. Barnhart, George W. Reeve, Charles H. Ferguson, Julius S. Grinnell,
65 Henry S. Boutell, John Cudahy, David A. Kohn, John A. Sweet and De Forest Skinner, abandoned all further proceedings with respect to the said organization of said Market National Bank of Chicago, as provided in said articles and certificate last mentioned, and the commencement by said Market National Bank of Chicago, of the business of banking, and said Market National Bank of Chicago never was authorized by the Comptroller of the Currency to commence the business of banking, and never did commence the business of banking, nor was any portion of its capital stock ever paid in.

18th. On the 3d day of January, A. D. 1895, said Leander J. McCormick gave to said A. F. Seeberger, as president of the Market National Bank of Chicago, a notice in writing of the desire and intention of him, the said McCormick, to terminate the said lease on May 1, 1895, in accordance with the terms thereof.

That the directors mentioned in the foregoing articles of association were all shareholders in said association, and had full knowledge and consented to the execution of said lease.

19th. That on the 17th day of June, A. D. 1895, said Leander J. McCormick commenced, in the superior court of Cook county, his action of assumpsit against the said Market National Bank of Chicago, as organized under the articles of association and organization certificate, dated January 31, A. D. 1893, to recover from said Market

National Bank of Chicago the rent specified in said lease hereinbefore mentioned, accruing down to May 1, A. D. 1895, together with one-half of the cost of changing the offices and building the vault in said demised premises, in which said suit such proceedings were had that said cause was submitted by the parties to said court
66 for decision upon certain facts then and there agreed upon by said Leander J. McCormick and said Market National Bank of Chicago, which said facts so agreed upon were the same facts and no others that are set forth in the foregoing paragraphs, numbered 1 to 18, both inclusive, of this agreed statement, and thereupon said superior court, on the 16th day of July, A. D. 1895, did render judgment in said suit in favor of said Leander J. McCormick and against said Market National Bank of Chicago, for the sum of two thousand five hundred and forty-eight and $\frac{35}{100}$ (2,548.35) dollars, which said judgment, upon the appeal of said Leander J. McCormick was thereafter, on November 18, A. D. 1895, affirmed by the appellate court of the first district of Illinois, and said judgment of said appellate court was thereafter, on the 11th day of June, A. D. 1896, upon the further appeal of said Leander J. McCormick, affirmed by the supreme court of Illinois; that said sum of two thousand five hundred forty-eight and $\frac{35}{100}$ (2,548.35) dollars, for which judgment was rendered, as aforesaid, was the amount of rent unpaid and accruing under said lease down to August 15, 1893, together with one-half the cost of changing the offices and building the vault in said demised premises, and said courts held that said McCormick was not entitled to recover from said Market National Bank of Chicago, as a corporation, any rent under said lease, accruing subsequent to said 15th day of August, A. D. 1893; and that said organization, known as the Market National Bank of Chicago, as a corporation, had no power to execute the lease in question upon which said suit was brought; that the execution of said lease was not incidental and necessarily preliminary to the organization of said corporation, and that said corporation or organization
67 had not been authorized by the comptroller to commence the business of banking, and that said organization or corporation had at no time authority to do any business, except such as was incidental and necessarily preliminary to its organization; and that said lease after August 15, 1893, was not valid or binding upon said association as a corporation, and the parties hereto agree to refer, and do refer, to the opinion of the appellate court of Illinois, which was adopted by the supreme court of Illinois in said cause, for the purpose of more clearly defining the points decided, and the basis of the judgment of said superior court of Cook county, said opinion being reported in volume 162 of the Illinois Reports, on pages 100 to 110, both inclusive, and being made by reference as part of the stipulation.

This suit is brought against the defendants by the plaintiff, who claims that the defendants were, at the time of the execution of said lease, copartners, or joint obligors, doing business under the name and style of the Market National Bank of Chicago, and further claims that the defendant had the power as such copartners, or joint

obligors, to bind themselves, and did bind themselves, in the manner aforesaid, for the rent falling due under the terms of said lease, after August 15, A. D. 1893, and up to May 1, 1895; the defendants, however, denying that they were or are such copartners or otherwise jointly liable, or that they were or are liable to the plaintiffs as such.

The foregoing facts shall be held to be competent evidence under the pleadings in this cause to the same extent that they would be under any form of pleadings; the intention of the parties being that under the pleadings in this cause the respective parties may
68 establish any cause of action or any defense that they could respectively establish under any form of pleadings; the plaintiff expressly waiving the verification by oath of the pleading of defendants denying joint liability, and agreeing that said plea shall be treated as of the same force as if duly verified by affidavit.

If upon the foregoing facts the court is of the opinion that the plaintiff is entitled to recover of and from the defendants, or any of them named below, judgment is to — entered against such defendant or defendants so liable, who have been served with summons, or who have entered their appearance herein, and in favor of the plaintiff, for such sum as the court is of the opinion the plaintiff is entitled to recover of and from such defendants, or either of them, together with costs of suit; but if, on the contrary, the court is of the opinion that the plaintiff is not entitled to recover of and from the defendants, or either of them, judgment is to be entered in favor of the defendants and against the plaintiff for costs of suit.

July 15, A. D. 1896.

PENCE & CARPENTER,
Att'ys for Plaintiff.
DUNCAN & GILBERT,
Attorneys for Defendants Anthony F. Seeberger, Julius S. Grinnell, Simeon D. Busey, Conway H. Hillman, Charles G. Blanden, Arthur M. Barnhart, John Cudahy, Charles E. Simons, David A. Kohn, George B. Reeve, and Henry S. Boutell.

The foregoing was all the evidence introduced on the trial of this cause.

Upon the trial of said cause the plaintiff, by his attorneys, asked the court to hold as law in the decision of this case the following propositions:

69 1. The court holds that it is the duty of the defendants in this case to prove that the Market National Bank of Chicago had a legal existence and was capable in law of executing the lease in question, and was capable in law of contracting the debt for which defendants are sought to be held liable; otherwise, the plaintiff is entitled to recover judgment against defendants for the full amount of the rent at the rate provided for in said lease from August 15, 1893, up to the date when said lease was terminated, in accordance with its provisions.

(But the court refused so to hold, to which ruling of the court the plaintiff, by his attorneys, then and there duly excepted.)

2. The court holds that the corporation known as the Market National Bank of Chicago was legally organized, but in executing said lease it attempted to do an act which it was not authorized to do, and which it was expressly forbidden to do, and the court holds that the directors and officers conducting or authorizing the execution of said lease themselves became liable thereon for damages for breach of warranty of authority.

(But the court refused so to hold, to which ruling of the court the plaintiff, by his attorneys, then and there duly excepted.)

3. The court holds that the directors and officers of a corporation are special agents of such body, and such special agents, acting in the name and for the benefit of such principal, without having legal authority, are themselves to be regarded as principals, and have all the rights and are subject to all the liabilities of a principal. If the execution of the lease in question was without the legal
70 authority of the Market national bank, then the directors and officers of said corporation become and are liable as principals upon said lease.

(But the court refused so to hold, to which ruling of the court the plaintiff, by his attorneys, then and there duly excepted.)

4. Where a person, holding himself out to be an agent, and the scope of the agency depends upon the existence of a fact or facts which lie particularly within the knowledge of the agent, and such fact or facts, or the non-existence thereof are not known to the party with whom he deals, the agent thereby, by implication, warrants that he has the proper authority, and the want of such authority is a fraud in law upon the party with whom he deals; hence, the court holds that if the authority and right of the officers and directors of the said Market national bank to execute the lease in question depended upon the existence of a fact or facts which would have conferred such authority, had such fact or facts existed, and if such fact or facts, or the non-existence thereof, lay peculiarly within the knowledge of said defendants and such fact or facts, or the non-existence thereof, were not known to the plaintiff, the defendants, by the execution of such lease, by implication, warranted that such fact or facts existed, and that they had the proper authority to execute such lease, and the non-existence of such fact or facts and the want of such authority was a fraud in law upon the plaintiff, and under such circumstances said defendants would be liable for damages for the breach of such warranty of authority.

(But the court refused so to hold, to which ruling of the court the plaintiff, by his attorneys, then and there duly excepted.)

71 5. If the defendants, at the time of the execution of the lease in question, by their words, acts or conduct induced the plaintiff to believe, and the plaintiff did believe, that the Market National Bank of Chicago was fully organized and had authority to commence a banking business, and if such Market National Bank of Chicago did not have such authority, then by such words, acts or conduct the said defendants perpetrated a fraud upon the plaintiff,

and rendered themselves liable as copartners, and thereby became bound as principals to perform the covenants of said lease.

(But the court refused so to hold, to which ruling of the court the plaintiff, by his attorneys, then and there duly excepted.)

6. If the defendants at the time of the execution of the lease in question knew that the Comptroller of the Currency had not given his consent to such corporation to commence a banking business, and if the plaintiff did not know of the want of such consent at that time, then the execution of such lease, which contained a provision that said office so rented should be "*used and occupied by said Market national bank as a banking office, and for no other purpose,*" was a representation to said plaintiff that said corporation had the authority to commence a banking business, and had the consent of the Comptroller of the Currency to that end, as required by law, and plaintiff was legally justified in relying upon such representation. And if no such authority to execute said lease existed at that time, and said plaintiff did not know of the want of such authority, and did not know of the want of consent on the part of said comptroller, then said defendant became thereby personally liable for breach of such warranty of authority.

72 (But the court refused so to hold, to which ruling of the court the plaintiff, by his attorneys, then and there duly excepted.)

7. The court holds that so far as the obligations of these defendants are concerned, the plaintiff was not bound to examine the records of the office of the Comptroller of the Currency to ascertain the facts touching the organization of the Market national bank, and that he was not chargeable with notice of the facts contained in or omitted from such record, touching such organization, so far as defendant's obligations are concerned, and he had the right to rely upon the representations, acts and conduct of the directors and officers of such corporation, respecting its legal organization, and its right to commence a banking business, and its right to execute the lease in question, and a representation need not be expressed, but may be implied, either from acts, silence or other conduct.

(But the court refused so to hold, to which ruling of the court the plaintiff, by his attorneys, then and there duly excepted.)

8. That court holds that if at the time of the execution and delivery of the lease in question, the defendants represented to the plaintiff that the Market national bank was organized under the statutes of the United States as a banking corporation, and was ready to commence a banking business, or concealed from said plaintiff the fact that it was not fully organized as a banking corporation, ready to commence a banking business, and made such representation or concealed such fact, with knowledge of the facts on the part of the defendants, viz: that said corporation had not received the final certificate from the Comptroller of the Currency authorizing it to commence a banking business; and if the plaintiff

73 was then ignorant of the truth of the matter and did not know that the final certificate of the Comptroller of the Currency had not been issued, giving his consent to the commencement

of a banking business, as required by law, and did not know that such corporation was not legally competent to commence a banking business, and if such representation was made, or if such concealment was permitted by said defendants, with the intention that the plaintiff should act upon such representation or concealment of the facts, aforesaid, and if such plaintiff was induced to act upon such representation or by reason of such concealment, in the execution and delivery of such lease, and thereby changed his previous position, then said defendants are estopped by such conduct from denying their liability to the plaintiff, upon the covenants of said lease, and became liable to the plaintiff for the breach of such warranty of authority.

But the court refused so to hold, to which ruling of the court the plaintiff, by his attorneys, then and there duly excepted.

9. The court holds that so far as the obligations of these defendants are concerned, that the plaintiff was not bound to examine the records of the office of the Comptroller of the Currency to ascertain the facts touching the organization of the Market national bank, and that he was not chargeable with notice of the facts contained in, or omitted from such record, touching such organization, and he had the right to rely upon the representations, acts and conduct of the directors and officers of such corporation respecting its legal organization, and its right to commence a banking business, and its right to execute the lease in question, and a representation need not be expressed, but may be implied, either from acts, silence or other conduct.

74 The court holds that if at the time of the execution and delivery of the lease in question the defendants represented to the plaintiff that the Market national bank was organized under the statutes of the United States as a banking corporation and was ready to commence a banking business, or concealed from said plaintiff the fact that it was not fully organized as a banking corporation, ready to commence a banking business, and made such representation or concealed such fact, with knowledge of the facts on the part of the defendants, viz: that said corporation had not received the final certificate from the Comptroller of the Currency, authorizing it to commence a banking business; and if the plaintiff was then ignorant of the truth of the matter and did not know that the final certificate of the Comptroller of the Currency had not been issued, giving his consent to the commencement of a banking business, as required by law, and did not know that such corporation was not legally competent to commence a banking business, and if such representation was made, or if such concealment was permitted by said defendants with the intention that the plaintiff should act upon such representation or concealment of the facts aforesaid, and if said plaintiff was induced to act upon such representation or by reason of such concealment, in the execution and delivery of such lease, and thereby changed his previous position, then said defendants are estopped by such conduct from denying their liability to the plaintiff upon the covenants of said lease, and became liable to the plaintiff for the performance of such covenants.

But the court refused so to hold, to which ruling of the court the plaintiff, by his attorneys, then and there duly excepted.

10. The Market National Bank of Chicago was legally
75 organized to transact such business as was incidental and necessarily preliminary to its organization, but was expressly prohibited from commencing the business of banking, or doing other things incidental thereto, as it had not been authorized by the Comptroller of the Currency to commence the business of banking.

That if the Comptroller of the Currency had authorized said corporation to commence the business of banking, then the execution and delivery of such lease would have been incidental to such banking business, and binding upon said corporation; that the right to commence such banking business at the time of the execution and delivery of said lease depended upon the existence of a fact, viz: the consent of the Comptroller of the Currency, the non-existence of which fact was known to said defendants, and was not known to said plaintiff.

The court holds that if at the time of the execution and delivery of the lease in question the defendants represented to the plaintiff that the Market national bank was organized under the statutes of the United States as a banking corporation, and was ready to commence a banking business, or concealed from said plaintiff the fact that it was not fully organized as a banking corporation, ready to commence a banking business, and made such representation or concealed such fact, with knowledge of the facts on the part of the defendants, viz: that said corporation had not received the final certificate from the Comptroller of the Currency, authorizing it to commence a banking business; and if the plaintiff was then ignorant of the truth of the matter and did not know that the final certificate of the Comptroller of the Currency had not been issued, giving his consent to the commencement of a bank-
ing business, as required *as* law, and did not know that
76 such corporation was not legally competent to commence a banking business, and if such representation was made, or if such concealment was permitted by said defendants, with the intention that the plaintiff should act upon such representation or concealment of the facts aforesaid, and if said plaintiff was induced to act upon such representation or by reason of such concealment, in the execution and delivery of such lease, and thereby changed his previous position, then said defendants are estopped by such conduct from denying their liability to the plaintiff, and such acts, conduct and representations constituted an implied warranty of authority on the part of said defendants, and they became liable for damages to plaintiff for the breach of such implied warranty.

But the court refused so to hold, to which ruling of the court the plaintiff, by his attorneys, then and there duly excepted.

And the court refused to hold and find the foregoing propositions as law, or any of them, to which said refusal so to hold and find as the law, the plaintiff then and there excepted by his attorneys.

Thereupon the court found the issues joined in favor of the de-

fendants, to which finding the plaintiff, by his attorneys, then and there excepted.

Thereupon the court entered judgment upon said finding in favor of said defendants, and against the said plaintiff for costs, to the entering of which said judgment the plaintiff, by his attorneys, then and there duly excepted.

And forasmuch as the matters and things aforesaid do not appear of record, the plaintiff prays that this, his bill of exceptions, may be signed and sealed, which is done accordingly.

13th May, 1897.

JOHN BARTON PAYNE, [SEAL.]
Judge of the Superior Court of Cook County.

O K.
H. GILBERT,
For Defendant.

77 And afterwards, to wit, on the 12th day of May, A. D. 1897, there was filed in the office of the clerk of said court a certain appeal bond, which is in the words and figures as follows, to wit:

Know all men by these presents that I, Leander J. McCormick, of the county of Cook and State of Illinois, *and* held and firmly bound unto Anthony F. Seeberger, William Cox, Julius S. Grinnell, Charles H. Ferguson, Simeon H. Busey, Conway W. Hillman, Charles G. Blanden, Charles D. Seeberger, Arthur M. Barnhart, John Cudahy, Charles E. Simons, Seneca D. Kimbark, David A. Kohn, George B. Reeve, and Henry S. Boutell, also of the same county and State, in the penal sum of two hundred and fifty (250) dollars, lawful money of the United States; for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly, severally, and firmly by these presents.

Witness our hands and seals this 4th day of March, A. D. 1897.

The condition of the above obligation is such that whereas
78 the said Anthony F. Seeberger, William Cox, Julius S. Grinnell, Charles H. Ferguson, Simeon H. Busey, Conway W. Hillman, Charles G. Blanden, Charles D. Seeberger, Arthur M. Barnhart, John Cudahy, Charles E. Simons, Seneca D. Kimbark, David A. Kohn, George B. Reeve, and Henry S. Boutell did, on the 1st day of May, A. D. 1897, in the superior court of Cook county, in the State aforesaid, and of the April term thereof, A. D. 1897, recover a judgment against the above-bounded Leander J. McCormick, besides costs of suit; from which said judgment of the said superior court of Cook county the said Leander J. McCormick has prayed for and obtained an appeal to the appellate court within and for the first district, in said State.

Now, therefore, if the said Leander J. McCormick shall duly prosecute his said appeal with effect, and moreover pay the amount of the judgment, costs, interests, and damages rendered and to be rendered against him in case the said judgment shall be affirmed in

said appelalte court, then the above obligation to be void;
79 otherwise to remain in full force and virtue.

LEANDER J. McCORMICK. [SEAL.]
By G. A. CARPENTER, *Attorney-in-fact.*

Approved:
JOHN BARTON PAYNE,
Judge Superior Court of Cook County.

O K.
DUNCAN & GILBERT.

Appellate Court of Illinois, First District, October Term, A. D. 1897.

LEANDER J. McCORMICK, Appellant, *vs.* ANTHONY F. SEEBERGER ET AL., Appellee. } Appeal from Superior Court.

80 *Assignment of Errors.*

Now comes said appellant, by Pence & Carpenter, his attorneys, and says that in the record and proceeding aforesaid, there is manifest error in this, to wit:

1st. The superior court erred in not finding the issues for plaintiff and in finding them for the defendants.

2d. The superior court erred in not entering judgment for plaintiff and in entering judgment for costs in favor of defendants and against said plaintiff.

3d. The superior court erred in not holding as law in the decision of said cause that it was the duty of defendants to prove that the Market National Bank of Chicago had a legal existence, and was capable in law of executing the lease in question in order to defeat plaintiff's claim, and it was error for said court to refuse to hold as law proposition *No. 1*, as tendered to the court.

4th. The superior court erred in not holding as law in the decision of said cause that the directors and officers conducting or authorizing the execution of said lease themselves became liable thereon for damages for breach of warranty, of authority, and it was error for said court to refuse to hold as law proposition *No. 2*, as tendered to the court.

5th. The superior court erred in not holding as law in the decision of said cause that the defendants, acting in the name and for the benefit of the Market national bank, without having legal authority, are themselves to be regarded as principals, and subject to all the liabilities of a principal, and that if the execution of the lease
81 in question was without legal authority of the Market national bank, then the directors and officers of said corporation became and were liable as principals upon said lease, and it was error for said court to refuse to hold as law proposition *No. 3*, as tendered to the court.

6th. The superior court erred in not holding as law in the decision of said cause that if the authority and right of the officers and

directors of said bank to execute the lease in question depended upon the existence of a fact or facts, which would have conferred such authority had such fact or facts existed, and if such fact or facts, or the non-existence thereof, lay peculiarly within the knowledge of said defendants, and such fact or facts, or the non-existence thereof, were not known to the plaintiff, then the defendants, by the execution of such lease, by implication, warranted that such fact or facts existed, and that they had the proper authority to execute such lease, and the non-existence of such fact or facts, and the want of such authority, was a fraud in law upon the plaintiff; and under such circumstances said defendants would be liable for damages for the breach of such warranty of authority, and it was error for said court to refuse to hold as law proposition *No. 4*, as tendered to said court.

7th. The superior court erred in not holding as law in the decision of said cause that if the defendants, at the time of the execution of the lease in question, by their words, acts or conduct, induced the plaintiff to believe, and the plaintiff did believe, that said bank was fully organized and had authority to commence a banking business, and if said bank did not have such authority, then by such words, acts or conduct the said defendants perpetrated a fraud upon the plaintiff, and rendered themselves liable as copartners, and became bound as principals, to perform the covenants of
82 said lease, and it was error for said court to refuse to hold as law proposition *No. 5*, as tendered to said court.

8th. The superior court erred in not holding as law in the decision of said cause that if the defendants, at the time of the execution of the lease in question knew that the Comptroller of the Currency had not given his consent to said bank to commence a banking business, and if the plaintiff did not know of the want of such consent at that time, then the execution of such lease, which contained a provision that said office, so rented, should be "used and occupied by said Market national bank as a banking office, and for no other purpose," was a representation to said plaintiff that said corporation had the authority to commence a banking business, and had the consent of the Comptroller of the Currency to that end, as required by law, and plaintiff was legally justified in relying upon such representation; and if no such authority to execute said lease existed at that time, and said plaintiff did not know of the want of consent on the part of said comptroller, then said defendant became thereby personally liable for breach of such warranty of authority, and it was error for such court to refuse to hold as law proposition *No. 6*, as tendered to said court.

9th. The superior court erred in not holding as law in the decision of said cause, that so far as the obligations of said defendants are concerned, the plaintiff was not bound to examine the records of the office of the Comptroller of the Currency to ascertain the facts touching the organization of said bank, and that plaintiff was not chargeable with notice of the facts contained in or omitted from such record touching such organization, so far as

defendants' obligations are concerned, and that plaintiff had
83 the right to rely upon the representations, acts and conduct of the directors and officers of such corporation, respecting its legal organization, and its right to commence a banking business, and its right to execute the lease in question, and the representation need not be expressed but may be implied, either from acts, silence or conduct, and it was error for said court to refuse to hold as law proposition *No. 7*, as tendered to the court.

10th. The superior court erred in not holding as law in the decision of said cause, that if, at the time of the execution and delivery of the lease in question, the defendants represented to the plaintiff that said bank was was organized under the statutes of the United States as a banking corporation, and was ready to commence business, or concealed from said plaintiff the fact that it was not fully organized as a banking corporation, ready to commence a banking business, and made such representation or concealed such fact with knowledge of the facts on the part of the defendants, viz., that said corporation had not received the final certificate from the Comptroller of the Currency, authorizing it to commence a banking business, and if the plaintifi was then ignorant of the truth of the matter, and did not know that the final certificate of the Comptroller of the Currency had not been issued, giving his consent to the commencement of a banking business, as required by law, and did not know that such corporation was not legally competent to commence a banking business, and if such representation was made, or if such concealment was permitted by said defendants, with the intention that the plaintiff should act upon such representation or concealment of the facts aforesaid, and if said plaintiff was induced to act upon such representation or by reason of such concealment in the execution and delivery of such lease, and thereby
84 changed his previous condition, then defendants are estopped by such conduct from denying their liability to plaintiff upon the covenants of such lease, and became liable to the plaintiff for the breach of such warranty of authority, and it was error for said court to refuse to hold as law proposition *No. 8*, as tendered to the court.

11th. The superior court erred in refusing to hold as law proposition *No. 9*, as tendered to the court, to which appellant refers and makes a part of this assignment.

12th. The superior court erred in refusing to hold as law proposition No. 10, as tendered to the court, to which appellant refers and makes a part of this assignment.

13th. The superior court erred in refusing to hold as law each and all propositions tendered to said court upon said trial by the plaintiff and numbered 1 to 10 inclusive.

14th. The finding and judgment of the superior court was contrary to the law.

15th. The finding and judgment of the superior court was contrary to the evidence.

Wherefore, appellant prays that said judgment may be set aside,

vacated and held for naught, and he may be restored to all he has lost by reason thereof.

PENCE & CARPENTER,
Attorneys for Appellant.

85 At a term of the appellate court begun and held at Chicago, on Tuesday, the fifth day of October, in the year of our Lord one thousand eight hundred and ninety-seven, within and for the first district of the State of Illinois.

Present: Hon. Francis Adams, presiding justice.
" " Thomas G. Winder, justice.
" " Nathaniel C. Sears, justice.
Thomas N. Jamieson, clerk; James Pease, sheriff.

LEANDER J. MCCORMICK, Appellant, *vs.* ANTHONY F. SEEBERGER ET AL., Appellees.	No. 7199. Appeal to Cook Superior. Error to Cook.

Be it remembered that on the 2nd day of November, A. D. 1897, it being one of the days of said October term, A. D. 1897, certain proceedings were had in said court and entered of record in words and figures following, to wit:

86 LEANDER J. MCCORMICK *vs.* ANTHONY F. SEEBERGER ET AL	7199. Error to Cook. Appeal from Cook Superior.

This cause, having this day been reached in the call of the docket, was argued by counsel for respective parties, and the court, not being fully advised in the premises, doth order that said cause be taken under advisement.

And afterwards, on the 6th day of January, A. D. 1898, the following proceedings were had and entered of record in said cause, to wit:

87 LEANDER J. MCCORMICK, Appellant, *vs.* ANTHONY F. SEEBERGER, WILLIAM COX, Julius S. Grinnell, Charles H. Ferguson, Simeon H. Busey, Conway W. Hillman, Charles G. Blanden, Charles D. Seeberger, Arthur M. Barnhart, John Cudahy, Charles E. Simons, Seneca D. Kimbark, David A. Kohn, George B. Reeve, and Henry S. Boutell, Appellees.	7199. Appeal, Cook Superior.

On this day came again the said parties, and the court, having diligently examined and inspected as well the record and proceedings aforesaid as the matters and things therein assigned for error, and being now sufficiently advised of and concerning the premises, are of the opinion that in the record and proceedings aforesaid and

in the rendition of the judgment aforesaid there is manifest
88 error; therefore it is considered by the court that for that error and others in the record and proceedings aforesaid the judgment of the superior court of Cook county in this behalf rendered be reversed, annulled, set aside, and wholly for nothing esteemed, and finds the facts as set forth in the stipulation in the record.

And it is further considered by the court that the said appellant recover of and from the said appellees the sum of $22,208.33 and his costs by him in this behalf expended, to be taxed, and that he have execution therefor.

And afterwards, on the 27th day of January, A. D. 1897, the following proceedings were had and entered of record in said cause, to wit:

LEANDER J. McCORMICK
v.
ANTHONY F. SEEBERGER ET AL. } Appeal, Superior.

89 The court, having considered the petition of appellees praying for a rehearing in said cause and being now fully advised in the premises, doth order that said petition for a rehearing be, and the same *as* hereby, denied.
(Judge Winder dissents.)

And afterwards, on the 21st day of February, A. D. 1898, the following proceedings were had and entered of record in said cause, to wit:

LEANDER J. McCORMICK
vs.
ANTHONY F. SEEBERGER ET AL. } 7199. Appeal, Superior.

This day came appellant, by his counsel, and moved the court for leave to amend the judgment entered in said cause; and the court, being fully advised in the premises, doth order that said motion be, and the same is hereby, allowed by striking out the name- of Charles H. Ferguson, William Cox, Charles D. Seeberger, and Seneca
90 D. Kimbark, named therein as appellees.

I, Thomas N. Jamieson, clerk of the appellate court in and for the first district of the State of Illinois, do hereby certify that the foregoing is a true copy of the final order and judgment and all other proceedings of the said appellate court in the above-entitled cause of record in my office.

In testimony whereof I have set my hand and affixed
[SEAL.] the seal of the said appellate court, at Chicago, this 25th day of February, in the year of our Lord one thousand eight hundred and ninety-eight.

THOMAS N. JAMIESON,
Clerk of the Appellate Court of the First District.

Supreme Court of Illinois, April Term, A. D. 1898.

ANTHONY F. SEEBERGER ET AL., Plaintiffs in Error, *v.* LEANDER J. MCCORMICK, Defendant in Error.	Error to Appellate Court, First District.

91 And now come the plaintiffs in error, by Hiram T. Gilbert, their attorney, and say that in the record and proceedings of the appellate court in this cause manifest error hath intervened, to the injury of said plaintiffs in error, in this:

First. The appellate court erred in not affirming the judgment of the superior court of Cook county.

Second. The appellate court *found* in reversing the judgment of the superior court of Cook county.

Third. The appellate court erred in entering judgment against plaintiff- in error and in favor of defendant in error in manner and form as the same was entered.

Fourth. The damage- awarded by the appellate court to defendant in error are excessive.

Whereupon, for this and other errors apparent in the record, the plaintiff- in error pray that the judgment of the appellate court may be reversed, etc.

HIRAM T. GILBERT,
For Plaintiff- in Error.

92 *Cross-errors Assigned by Defendant in Error.*

And now comes said defendant in error, by Pence & Carpenter, his attorneys, and say- that in the record and proceedings of the appellate court in this cause manifest error hath intervened, to the injury of said defendant in error, in this:

1st. The damage- awarded by the appellate court to the defendant in error are insufficient, and that interest, at the rate of five (5) per cent. per annum, should have been computed upon the unpaid rent from the dates when the same fell due, according to the terms of said lease, and should have been added to the amount of said damages allowed by the court.

2nd. The appellate court omitted, neglected, and refused to allow interest upon the installments of rent as the same fell due from time to time, according to the terms of said lease.

Wherefore, for these errors apparent in the record, the defendant in error prays that the judgement of the appellate court may be reversed, etc.

PENCE & CARPENTER,
Attorneys for Defendant in Error.

93 And afterwards, to wit, on the 18th day of April, A. D. 1898, certain proceedings were had and orders entered as follows, viz:

ANTHONY F. SEEBERGER, WILLIAM COX, JULIUS S. GRINNELL, Chas. H. Ferguson, H. Busey, Conway W. Hillman, Chas. G. Blanden, Chas. D. Seeberger, Arthur M. Barnhart, John Cudahy, David A. Kohn, Geo. B. Reeve, and Henry S. Boutell
vs.
LEANDER J. MCCORMICK
} Error to First District.

Now, on this day, come the parties hereto, and this being one of the days set apart for the call of the docket under the rules of this court, and it appearing to the court that plaintiff in error hath filed herein a duly certified transcript of the record and proceedings of the court below, together with printed abstracts thereof and
94 briefs and arguments of counsel in support of the errors assigned herein, and entered motion to reverse the judgment and remand said cause and for costs, and the said defendant in error having entered motion to affirm said judgment and for costs and *procedendo*, and said motions being taken under advisement for final hearing, and the clerk of this court reporting that said cause is now ready to be taken, *and* said cause is here submitted for the consideration and judgment of the court.

Therefore it is ordered by the court that this cause be, and the same is hereby, taken under advisement.

95 At a supreme court begun and held at Springfield, on Tuesday, the fourth day of October, in the year of our Lord one thousand eight hundred and ninety-eight, within and for the State of Illinois.

Present: Joseph N. Carter, chief justice; Alfred M. Craig, justice; Jacob W. Wilkin, justice; James H. Cartwright, justice; Benjamin D. Magruder, justice; Jesse J. Phillips, justice; Carroll C. Boggs, justice; Edward C. Akin, attorney general; Edward A. Baxter, sheriff.

Attest: CHRISTOPHER MAMER, *Clerk.*

Be it remembered, to wit, on the 24th day of October, A. D. 1898, the same being in vacation after the term of court aforesaid, the following proceedings were by said court had and entered of record, to wit:

96 ANTHONY F. SEEBERGER, WILLIAM COX, Julius S. Grinnell, Chas. H. Ferguson, Simeon H. Busey, Conway W. Hillman, Chas. G. Blanden, Chas. D. Seeberger, Arthur M. Barnhart, John Cudahy, David A. Kohn, Geo. B. Reeve, and Henry S. Boutell
vs.
LEANDER J. MCCORMICK.
} Error to First District.

And now, on this day, this cause having been argued by counsel, and the court having diligently examined and inspected as well

the record and proceedings aforesaid as the matters and things therein assigned for error, and being now sufficiently advised of and concerning the premises, for that it appears to the court now here that neither in the record and proceedings aforesaid is there anything erroneous, vicious, or defective, and in that record there is no error; therefore it is considered by the court that the
97 judgment aforesaid be affirmed in all things and stand in full force and effect, notwithstanding the said matters and things therein assigned for error; and it is further considered by the court that the said defendant in error recover of and from the said plaintiff in error his costs by him in this behalf expended, and that he have execution therefor.

98 At a supreme court begun and held at Springfield, on Tuesday, the sixth day of December, in the year of our Lord one thousand eight hundred and ninety-eight, within and for the State of Illinois.

Present: Joseph N. Carter, chief justice; Alfred M. Craig, justice; Jacob W. Wilkin, justice; James H. Cartwright, justice; Benjamin D. Magruder, justice; Jesse J. Phillips, justice; Carroll C. Boggs, justice; Edward C. Akin, attorney general; Charles M. Woods, sheriff.

Attest: CHRISTOPHER MAMER, *Clerk.*

Be it remembered that afterwards, to wit, on the second day of December, A. D. 1898, certain proceedings were had and orders entered as follows, viz:

99 ANTHONY F. SEEBERGER, WILLIAM COX, JULIUS S. GRINNELL, CHAS. H. FERGUSON, SIMEON H. BUSEY, CONWAY W. HILLMAN, CHAS. G. BLANDEN, CHAS. D. SEEBERGER, ARTHUR M. BARNHART, JOHN CUDAHY, DAVID A. KOHN, GEO. B. REEVE, AND HENRY S. BOUTELL

vs.

LEANDER J. MCCORMICK.

} Error to First District.

And now, on this day, the court having duly considered the petition for a rehearing herein and being fully advised, it is considered by the court that a rehearing be, and the same is hereby, granted herein.

100 And afterwards, to wit, on the 20th day of December, A. D. 1898, certain proceedings were had and orders entered as follows, viz:

ANTHONY F. SEEBERGER, WILLIAM COX, JULIUS S. GRINNELL, Chas. H. Ferguson, Simeon H. Busey, Conway H. Hillman, Chas. G. Blanden, Chas. D. Seeberger, Arthur M. Barnhart, John Cudahy, David A. Kohn, George B. Reeve, and Henry S. Boutell
vs.
LEANDER J. MCCORMICK.

No. 57. Error to First District.

Now, on this day, come the parties hereto, and this being one of the days set apart for the call of the docket under the rules of this court, and it appearing to the court that a rehearing has been granted herein, and plaintiff in error hath filed a duly cer-
101 tified transcript of the record and proceedings of the court below, together with printed abstracts thereof, and briefs and arguments of counsel in support of the errors assigned herein, and entered motion to reverse the judgment and remand said cause and for costs, and the said defendant in error having entered motion to affirm said judgment, and for costs and *procedendo*, and said motions being taken under advisement for final hearing, and the clerk of this court reporting that said cause is now ready to be taken, and said cause is here submitted for the consideration and judgment of the court:

Therefore it is ordered by the court that this cause be, and the same is hereby, taken under advisement.

102 At a supreme court begun and held at Springfield, on Tuesday, the seventh day of February, in the year of our Lord one thousand eight hundred and ninety-nine, within and for the State of Illinois.

Present: Joseph N. Carter, chief justice; Alfred M. Craig, justice; Jacob W. Wilkin, justice; James H. Cartwright, justice; Benjamin D. Magruder, justice; Jesse J. Phillips, justice; Carroll C. Boggs, justice; Edward C. Akin, attorney general; Charles M. Woods, sheriff.

Attest: CHRISTOPHER MAMER, *Clerk*.

Be it remembered, to wit, on the seventeenth day of February, A. D. 1899, the same being one of the days of the term of court aforesaid, the following proceedings were by said court had
103 and entered of record, to wit:

ANTHONY F. SEEBERGER, WILLIAM COX, Julius S. Grinnell, Chas. H. Ferguson, Simeon H. Busey, Conway W. Hillman, Chas. G. Blanden, Chas. D. Seeberger, Arthur M. Barnhart, John Cudahy, David A. Kohn, Geo. B. Reeve, and Henry S. Boutell
vs.
LEANDER J. MCCORMICK.

Error to First District.

And now, on this day, this cause having been argued by counsel, and the court having diligently examined and inspected as well the

record and proceedings aforesaid as the matters and things therein assigned for error, and being now sufficiently advised of and concerning the premises, for that it appears to the court now here that neither in the record and proceedings aforesaid nor in the rendition
of the judgment aforesaid is there anything erroneous, vicious,
104 or defective, and that in that record there is no error:

Therefore it is considered by the court that the judgment aforesaid be affirmed in all things and stand in full force and effect, notwithstanding the said matters and things therein assigned for error; and it is further considered by the court that the said defendant in error recover of and from the said plaintiff in error his costs by him in this behalf expended, and that he have execution therefor.

105 At a supreme court begun and held at Springfield, on Tuesday, the 7th day of February, in the year of our Lord one thousand eight hundred and ninety-nine, within and for the State of Illinois.

Present: Joseph N. Carter, chief justice; Alfred M. Craig, justice; Jacob W. Wilkin, justice; James H. Cartwright, justice; Benjamin D. Magruder, justice; Jesse J. Phillips, justice; Carroll C. Boggs, justice; Edward C. Akin, attorney general; Charles M. Woods, sheriff.

Attest: CHRISTOPHER MAMER, *Clerk.*

Be it remembered that afterwards, to wit, on the seventeenth day of February, 1899, the opinion of the court was filed in the words and figures following, to wit:

A. F. SEEBERGER
vs.
L. J. MCCORMICK. } No. 5, R. H. Error to First District. Appeal from.

106 Docket No. 233, Agenda 78, Northern Div., Dec., '98.

ANTHONY F. SEEBERGER ET AL.
v.
LEANDER J. MCCORMICK.

Mr. Chief Justice CARTER delivered the opinion of the court:

Defendant in error, Leander J. McCormick, brought assumpsit in the superior court of Cook county against the plaintiffs in error, Anthony F. Seeberger and others, as copartners, to recover rent accruing from August 15, 1893, to May 1, 1895, upon a lease made by McCormick to the Market National Bank of Chicago of a certain office, to be used exclusively for the purposes of a bank. The rent stipulated in the lease was $13,000 per annum, payable $1,083.33 monthly. Besides the common counts the declaration contained a special count declaring specially on the written lease. Besides the general issue the defendants below filed special pleas denying their joint liability, but before the issues were made the parties waived a jury and submitted the case to the court for decision upon a writ-

ten stipulation as to the pleadings and the facts, which was incorporated in the bill of exceptions and which contains the following: "The foregoing facts shall be held to be competent evidence, under the pleadings in this cause, to the same extent that they would be under any form of pleadings, the intention of the parties being that under the pleadings in this cause the respective parties may establish any cause of action or defense that they could, respectively, establish under any form of pleadings." The lease was set out in full in the stipulation, and showed that it was executed by plaintiff, McCormick, and by the Market national bank, by Seeberger, as its president, and Cox, its cashier. The defendants were all shareholders and directors of the bank. The bank was organized and incorporated but had not received a certificate of the Comptroller of the Currency authorizing it to transact a banking business. No such certificate was ever issued, and the organization was abandoned within a few months after its inception, but it and its officers occupied the leased premises from May 1 until August 15, 1893, when the officers of the bank vacated and offered to surrender the premises to McCormick, and upon his refusal to accept such surrender left the key upon his desk. In October following, under another agreement between the lessor and lessee, the lessor took possession of the premises to lease the same
107 upon such terms as might be agreed upon, to avoid as much loss as possible, with the agreement that it was to be without prejudice to the rights of either party; but the property was not rented, and it remained vacant until the lease was terminated, in 1895, in pursuance of its terms, when McCormick brought suit against the Market national bank to recover the rent stipulated in the lease, but as the national banking act provides that "no association shall transact any business, except such as incidental and necessarily preliminary to its organization, until it has been authorized by the Comptroller of the Currency to commence the business of banking," and as the comptroller had not given such authority, it was held that the bank had no power to enter into the lease, and could be held liable only for use and occupation until the premises were vacated, August 15, 1893. (*McCormick v. Market Nat. Bank*, 61 Ill. App., 33; 162 Ill., 100; 165 U. S., 538.) McCormick then brought this suit for the rent for the rest of the term, against the officers, directors and shareholders of the bank, as before stated.

Ten propositions were asked by the plaintiff below to be held as law in the decision of the case, but the court refused all of them and rendered judgment for the defendants. None were asked by the defendants. The plaintiff appealed, and the appellate court reversed the judgment and found "the facts as set forth in the stipulation in the record," and entered judgment against the defendants, and assessed the damages at the amount of the rent stipulated in the lease from August 15, 1893, to May 1, 1895, $22,208.33. The defendants then sued out this writ of error to reverse that judgment.

A preliminary question is raised by McCormick, the defendant in error, that as plaintiffs in error submitted no propositions to be

held as law by the trial court in the decision of the case, and preserved no exceptions to any ruling of that court, there is no question of law preserved for this court to decide; that the decision of the appellate court was upon the facts, and is final and conclusive. It is undoubtedly true that unless some question of law is presented by the record for our decision we can do nothing more than affirm the judgment, for we have no power to review the decision of the appellate court upon questions of fact. It is, however, contended by the plaintiffs in error that all questions of law necessary
108 for a full review of the judgment of the appellate court upon its merits are preserved for our consideration in one of two ways: First, that the finding of the appellate court that the facts were as set forth in the stipulation in the record must be treated as a finding of the facts different from the facts as found by the trial court, and that the sufficiency of the facts as found to support the judgment raises a question of law for decision by this court; second, that if it be held that the appellate court found the facts the same as they were found by the trial court, then the appellate court must have held the law different from the holding in that respect by the trial court in refusing to hold the propositions asked by the plaintiff below as law in the decision of the case—that is to say, that these propositions contained the plaintiff's contentions as to the law of the case and were refused, and if the appellate court and the trial court agreed as to the facts, the effect of the judgment of the appellate court was to reverse the decision of the trial court upon these propositions of law and to hold that they should have been held as law in the decision of the case, and that this decision of the appellate court raises here the questions of law presented by these propositions.

After a further consideration of the case on rehearing we have reached the conclusion that the contentions of plaintiffs in error on this branch of the case must prevail. We are not disposed to defeat the right of review in this court by adopting the refined distinctions urged upon us by defendant in error. Counsel on both sides have cited and reviewed many cases decided in this court similar in some respects to this, but none where this precise question has been decided. The question has usually arisen where the judgment of the trial court has been affirmed by the appellate court and the facts found the same as by the trial court. In such a case, where no question of law decided by the trial court has been preserved for decision, the judgment of the appellate court upon the facts as found below is necessarily conclusive. But in the case at bar not only has the judgment of the trial court been reversed, but a judgment for the demand of the plaintiff has been rendered by the appellate court. We shall consider first the second question raised by plaintiffs in error—that is, that questions of law are presented here by the decision of the appellate court upon the propositions presented in the trial court by the plaintiff there, which may be availed of by them.

109 If because of, or notwithstanding, the finding of the appellate court that it found "the facts as set forth in the stipu-

lation" it should be held that the appellate court found the facts the same as found by the trial court—that is, that the two courts agreed not only as to the facts stated in the stipulation, (which they did, of course,) but also as to all proper inferences of fact to be drawn from the agreed facts—then it follows, necessarily, that the appellate court reversed the judgment for errors of law; and in the absence from the record of any question of law having been raised by the record except by the propositions of law, it should be presumed that the appellate court, while agreeing with the trial court as to the facts, disagreed as to the propositions of law, and was of the opinion that they, or some of them, should have been held as law in the decision of the case. Now, no exceptions can be taken or saved in the appellate court to its rulings or decisions, and as any question of law arising upon the record proper may be availed of on appeal or on error, it follows that if the effect of the decision of the appellate court was to hold that said propositions tendered by the plaintiff below stated the law correctly and should have been held, such decision of the appellate court was adverse to defendants, and can be availed of here as fully as if it had arisen upon propositions held as law presented by them and decided by the appellate court to have been erroneous. They could have taken and saved no exceptions in the trial court in either case, the rulings there being in their favor. Whether they might not, by propositions of their own, have presented questions of law not raised by the propositions presented by the plaintiff is not the question, but the point is that they may assign as error for what it is worth the adverse decision of the appellate court holding that the propositions which were presented by their adversary and refused in the trial court were correct and should have been held. Instead of finding and reciting in its judgment the ultimate facts, if it found the facts in whole or in part different from the finding of the trial court, as was done in *Huyett & Smith Co. v. Edison Co.*, 167 Ill., 233, and held proper in *Hayes v. Massachusetts Life Ins. Co.*, 125 *id.*, 626, and other decisions of this court, the appellate court simply found the facts as
110 set forth in the stipulation, which, of course, embraced many mere evidentiary facts from which the ultimate facts may have been deduced or inferred. As we have held, the statute (the 87th section of the practice act) applies as well where the facts are agreed upon as where they are proved by witnesses, such agreed facts being treated in the same way as the evidence would be treated if proved by witnesses. *Huyett & Smith Co. v. Edison Co., supra; Bolton v. Johnston*, 163 Ill., 234; *Grabbs v. City of Danville*, 166 *id.*, 441.

The finding as made by the appellate court has led to the uncertainty in the record whether its judgment is the result of finding the facts different from the facts as found by the trial court, or as the result of a conclusion that the trial court erred in not holding as law the propositions submitted on the trial; but as in this case we are of the opinion that the same questions of law arise in either event, that uncertainty cannot materially affect the decision of the case. In considering, then, the view of the case (which we are in-

clined to adopt) that the finding of the appellate court was a finding of the facts different from the facts found by the trial court, the question of law is raised by the record itself whether or not the facts as found are legally sufficient to support the judgment. In passing upon this question every inference of fact arising from the evidentiary facts which are contained in the finding, which tends to support the judgment, must be indulged as fully as in case the question arose on an instruction or proposition of law in the trial court that a certain one of the parties was entitled to recover. So treating the finding of the appellate court as a finding of the ultimate facts upon which it based its judgment of damages then recovered for the first time by the plaintiff, the legal question arises, independently of any propositions of law, whether the law authorized the judgment which was rendered on such facts, or not. This is necessarily so, otherwise there might be no way to raise this question, not of fact but of law, in this court in cases of this character. A proposition asked in the trial court to be held as law would not necessarily raise it, for such a proposition that the designated party was or was not entitled to recover under the evidence would be properly refused if there was any evidence which, in the eye of the law, tended to prove the contrary, and the appellate court would, on appeal or writ of error, so hold, but at the same time, as the final arbiter of the facts, would re-
111 verse the judgment on the facts and enter a final judgment of its own upon the evidence, and find and recite in its judgment the facts contrary to the finding below. In such a case the exception saved by the party who had offered the proposition would avail him nothing in questioning the legal sufficiency of the facts as found and recited by the appellate court to support its judgment. It cannot be supposed that the law intended that the appellate court should not only have the power to determine finally and conclusively all questions of fact in cases at law, and to enter final judgment upon a finding of the facts different from the finding below, but also to settle, beyond the power of review, all questions of law arising as to the sufficiency of such facts there found and settled for the first time to support its judgments. Thus, it was held in *Borg v. Chicago, Rock Island and Pacific Railway Co.*, 162 Ill., 348, that the power of the appellate court to reverse without remanding where it finds the facts different from the facts as found by the trial court is not limited to cases where the trial court might direct a verdict, but extends to cases where the evidence must be weighed. See, also, *Everts v. Lawther*, 165 Ill., 487, and *City of Spring Valley v. Spring Valley Coal Co.*, 173 *id.*, 497. No question arises in the case at bar as to the power of the appellate court to enter the judgment for the plaintiff's demand, as in the cases cited, for the reason that trial by jury was waived, and, besides, judgment was stipulated for. In 173 Ill., p. 503, above cited, in speaking of the 87th section of the practice act, we said: "That section has been acted upon in numerous cases, and it has always been held that the only question which can be presented to this court is whether the facts as found and recited in the judgment justify the judgment rendered by the

appellate court." Also in *Hawk v. Chicago, Burlington and Northern Railroad Co.*, 147 Ill., 399, where there was a reversal and a finding and recital of the facts, we said: "Under our former decisions there is but one question presented for consideration, and that is, conceding the facts to be as found by the appellate court, was the law properly applied in that court?"

Considering, then, the case upon the questions of law arising on the record, the judgment of the appellate court must rest, and be sustained, if at all, upon one of three legal propositions, and
112 counsel for McCormick insist that it can be sustained upon any one of them: First, that plaintiffs in error are liable to McCormick as copartners, by virtue of the lease to the bank of which they were directors and by virtue of the agreed facts, the lease failing to bind the bank; or, second, that they are liable on their implied warranty, in acting for the bank, that all the necessary steps had been taken in organizing the bank, so that it was authorized to execute the lease; or, third, that plaintiffs in error are liable to defendant in error in an action on the case for deceit, for falsely assuming an authority which they did not possess and by which he was misled to his injury.

The stipulation, among other things, contains the following: "The said Leander J. McCormick, at the time of the negotiations prior to the execution of said lease and at the time of the execution of said lease, and at the time when said officers of said Market National Bank of Chicago took possession of the demised premises on the 22d day of June, A. D. 1893, understood and believed that said Market National Bank of Chicago was duly and legally organized as a national bank, and that, as such, it was ready to do a banking business, and that it had the power to enter into said lease and the agreements connected therewith, and had no knowledge or information to the contrary until the 15th day of August, A. D. 1893, at which time the officers of the said Market National Bank of Chicago informed said McCormick that said Market National Bank of Chicago had no power to enter into said lease, and offered to surrender to said McCormick said demised premises and said lease, and the said McCormick was then and there informed by the said officers of said Market National Bank of Chicago that said Market National Bank of Chicago had never been authorized by the Comptroller of the Currency to commence the business of banking, but nevertheless said McCormick then and there refused to accept such surrender."

As has been seen, the pleadings were sufficiently broadened by the stipulation to sustain a judgment in any form of action which the evidence agreed upon would establish. It is plain, upon principle and authority, that plaintiffs in error cannot be held upon the lease itself, as parties thereto. They are not named as parties to or otherwise in the instrument, and there are no apt words to bind them to its covenants. (*Hancock v. Yunker*, 83 Ill.,
113 208.) But counsel for defendant in error insist that under all of the facts as found, plaintiffs in error are liable as copartners in assuming to act for and on behalf of the bank as a cor-

poration when the bank had no authority to enter into the contract, and cite *Bigelow v. Gregory*, 73 Ill., 197, and *Loverin v. McLaughlin*, 161 *id.*, 417. In these cases this court held, in substance, that persons who associated themselves together by articles of agreement to become a corporation, but do not comply with the law so as to become a corporation, will be liable as partners for contracts made by them in the name assumed as the corporate name. In the *Loverin case* they were held liable under the statute of this State, and it was also there said they were liable independently of the statute. But in those cases there was a failure to incorporate, while in the case at bar the lessee, the Market national bank, was a corporation *de jure*, but was by the act by which it was incorporated incapacitated from transacting the business of banking, or entering into contracts of the character of this lease, until it had received the certificate of the comptroller, which he was not authorized to issue until certain requirements had been complied with, one of which was that one-half of the capital subscribed had been paid in. But the bank had the corporate power to transact such business and make such contracts as were "incidental and necessarily preliminary to its organization." It is not a case where the party to the contract had no corporate power, but one where its corporate power was exceeded,—a case where the contract was not *ultra vires* corporations organized under the law under which it was incorporated, but *ultra vires* this corporation, because it had failed to comply with a certain provision, without compliance with which there was a deficiency of corporate power. Here there was a *de jure* corporation, while in the cases cited there was none. We are disposed to agree with the appellate court that the principle on which individuals so associated are held as partners is not in causing the corporation to exceed its powers, but in acting for and in the name of a presumed corporation which has no corporate existence. *Trowbridge v. Scudder*, 11 Cush., 83; *First Nat. Bank v. Almy*, 117 Mass., 476; *Gent v. Manufacturers' and Merchants' Mutual Ins. Co.*, 107 Ill., 652; *Loverin v. McLaughlin*, *supra*.

114 The second proposition of defendant in error is, that plaintiffs in error, if not liable as partners, are still liable *ex contractu* upon their implied warranty of their authority to execute, or to cause to be executed on behalf of the corporation, the lease in question. The principle is one of agency, and that plaintiffs in error, as the agents of the corporation in making the contract of lease, by necessary implication asserted to the lessor that they were in fact authorized to cause the lease to be executed by the corporation. Where the contract is made in good faith and both parties are fully cognizant of the facts, and the mistake is one of law only, the result of which is to exonerate the principal from liability because the agent had no lawful authority to make the contract, it is clear that the agent cannot be held liable, either *ex contractu* or *ex delicto*. The appellate court was authorized to find, and doubtless did find, that this was not such a case. These directors were charged with knowledge that they had not taken the necessary steps to obtain, and had not obtained, the certificate of the comptroller necessary to

confer power to make the lease, and it was a fair inference for the appellate court to draw from the agreed facts that McCormick did not know of this omission until August 15, 1893,—several months after the lease was executed and after possession of the premises had been taken by the lessee under it. The stipulation also showed that the plaintiffs in error canceled their articles of association in July, but remained in possession of the premises until the 15th day of August. They had by resolution authorized and directed the execution of the lease, and there can be no doubt of the legal sufficiency of the evidence to establish an implied warranty on their part of their authority to enter into the lease on behalf of the corporation, if such implied warranty is in law a sufficient ground on which to make them liable to respond in damages to McCormick for a breach of such warranty.

It is, however, contended by the plaintiffs in error that the law is that there is no such liability *ex contractu*, and that the only remedy is by a special action on the case, and then only when there has been some deception practiced on the opposite party,—some misrepresentation to or concealment from him of some material fact,—and which deception, misrepresentation or concealment operated
115 to induce him to enter into the contract; and we are referred to *Duncan v. Niles*, 32 Ill., 532, and *Hancock v. Yunker*, 83 *id.*, 208, and the opinion of the appellate court in this case, as settling the law to that effect in this State. We do not regard the cases cited as holding that an action *ex contractu* upon the implied warranty cannot be maintained. That question was not in issue in either of the two cases cited, decided by this court. True, it was said that an action on the case for deceit would lie. In the *Duncan-Niles case* the action was brought against Niles on the note which Niles, assuming to act for the county, had given as the note of the county, and it was held that the contract was void and that neither party could be held on it, the county not having authorized it and there being no apt words in the instrument to bind Niles. It was there said, that "if the defendant falsely represented himself as the agent of the county and authorized to obtain this money, and did so obtain it, he may be reached by a special action on the case for the fraud, *or in some other appropriate action, but not on the note itself.*" And in the *Hancock-Yunker case* the action was covenant on the lease against the individual trustees who executed it on the part of the Chicago Literary Association, and it was held they were not liable on the instrument, it containing no apt words to bind them individually. Mr. Justice Scholfield, in delivering the opinion of the court, among other things said: "The question here is not whether these defendants may be held liable to the plaintiff *in a proper form of action*, but whether they are liable *in this form of action*,—*i. e.*, covenant upon the lease." True, the opinion contains the quotation in the *Duncan-Niles case* from *Abbey v. Chase*, 6 Cush., 56, that in Massachusetts the only remedy against the agent is by action on the case for falsely assuming to act as agent; but those cases cannot be treated as having decided that an action in assumpsit, not on the instrument itself but on the implied warranty of authority to execute it, cannot be maintained in this State. We are

of the opinion that upon both principle and authority such an action can be maintained. Indeed, the fraud, if any, arises out of the contractual relations which the parties have assumed. The express contract purporting to bind the principal may be void, but if the agent has given his warranty, express or implied, that he is authorized by his principal to execute the contract when he has no
116 such authority, we know of no principle of law or logic which would prevent the other party from recovering for the breach of such warranty where injury has been sustained by such breach. Why may he not waive the tort, where tort exists, and sue in assumpsit? That an action *ex contractu* on the implied warranty will lie, has been decided by many authorities. Mechem on Agency, sec. 549; 1 Am. & Eng. Ency. of Law, 2d ed., 1127; Anson on Contracts, p. 460; *Mahurin v. Harding*, 28 N. H., 128; *Collen v. Wright*, 7 E. & B., 301; *Cherry v. Colonial Bank*, L. R., 3 Privy Council App., 24; *Downman v. Williams*, 7 Q. B., 111; *Beattie v. Lord Ebury*, 7 Eng. & Irish App. H. L., 102; *Lewis v. Nicholson*, 18 A. & E., 502; Story on Agency, sec. 264; *Patterson v. Lippincott*, 47 N. J. L., 457; *White v. Madison*, 26 N. Y., 117; *Richardson v. Williamson*, L. R., 6 Q. B., 276.

Doubtless, in many cases a recovery may be had in either form of action, but in others the character of the suit must be determined by the facts of the case. Thus it is said in Mechem on Agency, sec. 549: "Much question has been raised as to the form of action in which the agent who acts without authority is to be held liable,—whether an assumpsit can be maintained or only a special action on the case. It would seem that this is a question to be determined largely by the particular facts of each case. Where an agent who knows that he has no authority makes express assertions that he possesses it, or so acts as to amount to an assertion of authority, and by so doing deceives and injures the other party who has relied thereon, it cannot be doubted that an action on the case for the deceit is an appropriate remedy. At the same time, an action of assumpsit upon the express or implied warranty of authority might also be maintained instead of the action on the case."

As the record in this case shows a clear right of action for a breach of the implied warranty of authority against the plaintiffs in error, we deem it unnecessary to decide whether or not the findings of fact by the appellate court would sustain an action on the case for deceit.

It is next contended by the plaintiffs in error that the appellate court erred in assessing more than nominal damages against them. Their contention is, that the rent stipulated in the lease cannot be regarded as the measure of damages. It is not denied, however, that it is some evidence of the damages sustained and may
117 properly be considered. The contentions of counsel in respect to the amount of damages are based upon their conclusion that the only remedy that the plaintiff below had was in an action on the case. It appears from the record that by agreement between the parties McCormick took possession of the premises in October, 1893, to rent them upon such terms as might be agreed

upon, so as to avoid as much of the loss as possible, but without prejudice to the rights of either party; that he made every effort to procure a tenant but was unable to do so. The premises stood idle during the term for which recovery was allowed by the appellate court. It was also stipulated that if the court, upon the agreed facts, should be of the opinion that the plaintiff should recover from the defendants, judgment should be entered for such sum as the court should be of the opinion the plaintiff was entitled to recover. Aside from the rent agreed to be paid in the lease, and the payment at that rate for a part of the time prior to August 15, 1893, there was no evidence of the rental value of the property or of the damages which the plaintiff below sustained. It is manifest from the stipulation that we cannot say, as a matter of law, that there was no evidence upon which the appellate court could base its findings. Indeed, counsel for plaintiffs in error, as we understand their argument, so concede if a recovery can be had in an action *ex contractu*.

Finding no error, the judgment will be affirmed.

Judgment affirmed.

118 STATE OF ILLINOIS, *ss:*

Supreme Court.

I, Christopher Mamer, elected clerk of the supreme court in and for the northern grand division of the State of Illinois and keeper of the records and seal thereof, do hereby certify that the foregoing thirteen pages *is* a true copy of the opinion of the said supreme court in the above-entitled cause of record in my office.

This copy is not to operate as a mandate in any event. Mandate will be issued only on request and payment of costs.

In testimony whereof I have set my hand and affixed the seal of the said supreme court, at Springfield, May 4, 1899.

[Seal Supreme Court of Illinois.]

C. MAMER,
Clerk of the Supreme Court.

119 At a supreme court begun and held at Springfield, on Tuesday, the fourth day of April, in the year of our Lord one thousand eight hundred and ninety-nine, within and for the State of Illinois.

Present: Joseph N. Carter, chief justice; Alfred M. Craig, justice; Jacob W. Wilkin, justice; James H. Cartwright, justice; Benjamin D. Magruder, justice; Jesse J. Phillips, justice; Carroll C. Boggs, justice; Edward C. Akin, attorney general; Charles M. Woods, sheriff.

Attest: CHRISTOPHER MAMER, *Clerk.*

Be it remembered that afterwards, to wit, on the 6th day of April, A. D. 1899, certain proceedings were had and orders entered as follows, viz:

120 ANTHONY F. SEEBERGER, WILLIAM COX, Julius S. Grinnell, Chas. H. Ferguson, Simeon H. Busey, Conway W. Hillman, Chas. G. Blanden, Chas. D. Seeberger, Arthur M. Barnhart, John Cudahy, David A. Kohn, Geo. B. Reeve, and Henry S. Boutell
vs.
LEANDER J. McCORMICK.
Error to First District.

And now, on this day, it is considered and ordered by the court that the petition for rehearing herein filed be, and the same is, stricken from the files.

121 And afterwards, to wit, on the 13th day of May, A. D. 1899, there was filed in the clerk's office of said court a certain petition and bond; which said petition and bond are in the words and figures following, viz:

Supreme Court of Illinois, February Term, A. D. 1899.

ANTHONY F. SEEBERGER, JULIUS S. GRINNELL, Simeon D. Busey, Conway H. Hillman, Charles G. Blanden, Arthur M. Barnhart, John Cudahy, Charles E. Simon, David A. Kohn, George B. Reeve, and Henry S. Boutell, Plaintiffs in Error,
v.
LEANDER J. McCORMICK, Defendant in Error.
Error to App. Ct., First District.

To the Honorable Henry B. Brown, one of justices of the
122 Supreme Court of the United States:

Your petitioners, Anthony F. Seeberger, Julius S. Grinnell Simeon D. Busey, Conway H. Hillman, Charles G. Blanden, Arthur M. Barnhart, John Cudahy, Charles E. Simon, David A. Kohn, George B. Reeve, and Henry S. Boutell, respectively represent unto your honor that a final judgment was entered in the above-entitled cause by the supreme court of the State of Illinois on or about the 18th day of February, A. D. 1899.

Your petitioners further represent that your petitioners in said cause claimed immunity from liability to the plaintiff in said cause in the trial court, being the defendant in error in said supreme court, under section 5136 of the Revised Statutes of the United States, and that a decision of the appellate court of the first district in said cause reversing the judgment and decision of the superior court of Cook county, Illinois, and entering judgment in favor of the plaintiff in said suit and against your petitioners and
123 the decision of said supreme court of Illinois affirming said judgment and decision of said appellate court were against the immunity thus claimed by your petitioners.

Wherefore your petitioners pray that a writ of error may be allowed to have said record and proceedings reviewed by the Supreme

Court of the United States, at Washington, in accordance with the statute in such case made and provided.

Respectfully submitted.

ANTHONY F. SEEBERGER,
JULIUS S. GRINNELL,
SIMEON D. BUSEY,
CONWAY H. HILLMAN,
CHARLES G. BLANDEN,
ARTHUR M. BARNHART,
JOHN CUDAHY,
CHARLES E. SIMEON,
DAVID A. KOHN,
GEORGE B. REEVE, AND
HENRY S. BOUTELL,
By HIRAM GILBERT,
Their Attorney.

E. S. BRIGHT, *Of Counsel.*

124 Upon examination of the above petition it is ordered that the prayer thereof be allowed.

BROWN,
Associate Justice of the Supreme Court of the United States.

(*Bond.*)

Know all men by these presents that we, Anthony F. Seeberger, as principal, and Hiram T. Gilbert, as surety, of the county of Cook and State of Illinois, are held and firmly bound unto Leander J. McCormick, of said county and State, in the penal sum of one thousand dollars ($1,000), lawful money of the United States; for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, administrators, and assigns, jointly and severally and firmly by these presents.

Witness our hands and seals this 10th day of May, A. D. 1899.

The condition of the above obligation is such that whereas
125 said Leander J. McCormick did, on or about the 6th day of January, A. D. 1898, recover in the appellate court of the first district of Illinois a judgment against said Anthony F. Seeberger, Julius S. Grinnell, Simeon D. Busey, Conway H. Hillman, Charles G. Blanden, Arthur M. Barnhart, John Cudahy, Charles E. Simon, David A. Kohn, George B. Reeve, and Henry S. Boutell for the sum of twenty-two thousand *tow* hundred eight dollars and thirty-three cents ($22,208.33) and costs of suit in a certain suit therein pending in said court, wherein said Leander J. McCormick was the appellant and said Anthony F. Seeberger, Julius S. Grinnell, Simeon D. Busey, Conway H. Hillman, Charles G. Blanden, Arthur M. Barnhart, John Cudahy, Charles E. Simeon, David A. Kohn, George B. Reeve, and Henry S. Boutell were the appellees, being an appeal *form* the superior court of Cook county, Illinois, to reverse

which said judgment of said appellate court of the first dis*dis-*
126 trict of Illinois the said Anthony F. Seeberger, Simeon D. Busey, Conway H. Hillman, Charles G. Blanden, Arthur M. Barnhart, John Cudahy, Charles E. Simon, David A. Kohn, George B. Reeve, and Henry S. Boutell sued out and prosecuted a writ of error from the supreme court of the State of *of* Illinois; and

Whereas the said supreme court of the State of Illinois did afterwards, on the 18th day of February, A. D. 1899, affirm the said judgment of said appellate court of the first district of Illinois, and did render judgment against the above-bounden Anthony F. Seeberger, Julius S. Grinnell, Simeon D. Busey, Conway H. Hillman, Charles G. Blanden, Arthur M. Barnhart, John Cudahy, Charles E. Simon, David A. Kohn, George B. Reeve, and Henry S. Boutell for costs of suit; and

Whereas the said Anthony F. Seeberger, Julius S. Grinnell, Simeon D. Busey, Conway H. Hillman, Charles G. Blanden, Arthur M. Barnhart, John Cudahy, Charles E. Simon, David
127 A. Kohn, George B. Reeve, and Henry S. Boutell have obtained a writ of error from the Supreme Court *og* the United States of America to said supreme court of Illinois to reverse the judgment in the aforesaid suit, and a citation directed to said Leander J. McCormick, citing and admonishing him to be and appear before said Supreme Court of the United States thirty (30) days from the date thereof:

Now, the condition of the said obligation is such that if the said Anthony F. Seeberger, Julius S. Grinnell, Simeon D. Busey, Conway H. Hillman, Charles G. Blanden, Arthur M. Barnhart, John Cudahy, Charles E. Simon, David A. Kohn, George B. Reeve, and Henry S. Boutell shall prosecute their said writ of error to effect and pay the costs to be rendered against them if they shall fail to make good their plea, then the above obligation to be void; otherwise to remain in full force and effect.

128 ANTHONY F. SEEBERGER. [SEAL.]
HIRAM GILBERT. [SEAL.]

Approved:

H. B. BROWN,
Associate Justice, Supreme Court of the United States.

This bond is satisfactory as to form and surety.

PENCE, CARPENTER & HIGH,
Attorneys for Leander J. McCormick.

129 Supreme Court of the United States, October Term, A. D. 1899.

ANTHONY F. SEEBERGER ET AL., Plaintiffs in Error, *vs.* LEANDER J. McCORMICK, Defendant in Error.	Error to Supreme Court of Illinois.

And now comes the plaintiffs in error, by Hiram T. Gilbert, their attorney, and say that in the record and proceedings of the court below in the above-entitled cause manifest error hath intervened to the prejudice of said plaintiffs in error, in this:

First. The court below erred in affirming the judgment of the appellate court of the first district of Illinois.

Second. The court below erred in not reversing the judgment of the appellate court of the first district of Illinois and in not affirming the judgment of the superior court of Cook county.

Third. The court below erred in not holding that section
130 5136 of the Revised Statutes of the United States made the defendant in error, Leander J. McCormick, chargeable with notice that the Market National Bank of Chicago had no power to enter into the lease mentioned in the record, and that such notice protected the plaintiffs in error from liability to said defendant in error.

Fourth. The court below erred in holding that, so far as the obligations of plaintiffs in error were concerned, the defendant in error was not bound to examine the records of the office of the Comptroller of the Currency to ascertain the facts touching the organization of the Market national bank, and that he was not chargeable with notice of the facts contained in or omitted from such records touching such organization, so far as the obligations of plaintiffs in error were concerned.

131 Wherefore, for these and other errors apparent in the record, the plaintiffs in error pray that the judgment of the supreme court of Illinois may be reversed, &c.

HIRAM T. GILBERT,
Attorney for Plaintiffs in Error.

Endorsed on cover: File No., 17,436. Illinois supreme court. Term No., 322. Anthony F. Seeberger, Julius S. Grinnell, Simeon D. Busey, *et al.*, plaintiffs in error, *vs.* Leander J. McCormick. Filed June 5, 1899